25-247

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1210.

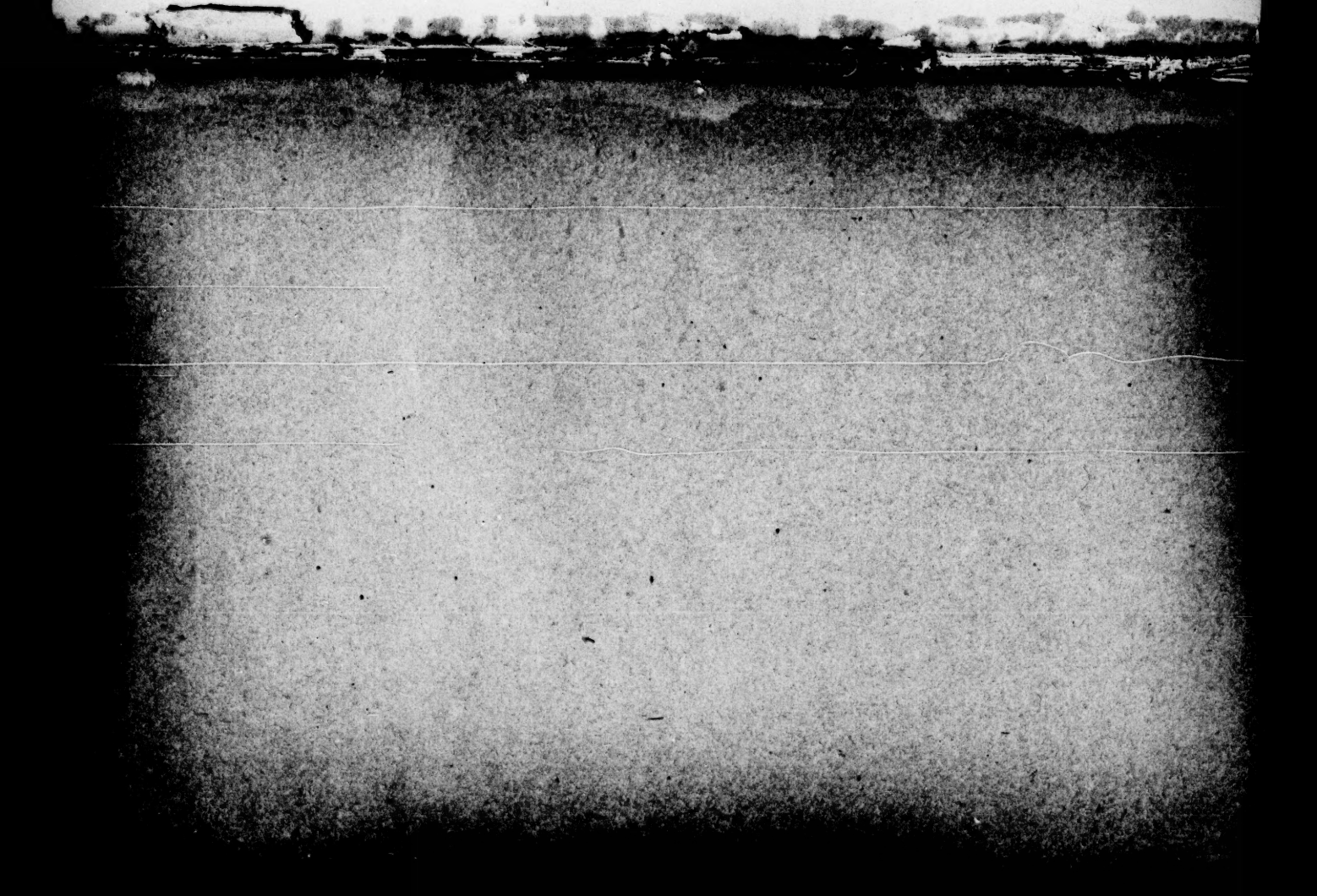
THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, APPELLANT,

vs.

FRANK SILVA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 13, 1887.



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1 *Complaint.*

In the Superior Court of the County of Inyo, State of California.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiff,
v.
FRANK SILVA, Defendant.

The plaintiff in the above-entitled action, complaining of the defendant in said action, alleges—

1. That at all the times hereinafter mentioned the plaintiff, The Southern Development Company of Nevada, *were* and still *are* a corporation duly created and existing under and by virtue of the laws of the State of Nevada.

That the said plaintiff, at the special instance and request of the said defendant, did, on or about the 15th day of February, A. D. 1884, bargain with the said defendant to buy, and did buy of him, at
2 and for the agreed price and sum of ten thousand dollars, that certain mining claim situate in the new Cosa mining district, county of Inyo, State of California, known and commonly designated as the "Sterling mine," and more particularly described as follows, to wit: Being fifteen hundred feet in length northwesterly and southeasterly and six hundred feet in width, and being about ten miles southwardly from the town of Darwin, in the west side of the Argus range of mountains, defendant being then and there the owner of said claim.

That plaintiff then paid to defendant, as and for the purchase money and price of said mine and in pursuance of said agreement, the said sum of ten thousand dollars, and the defendant then executed and delivered to plaintiff his deed of conveyance of said mining claim. Plaintiff further avers that the defendant, to induce it to agree to buy said mining claim and to pay therefor the said sum of ten thousand dollars, before and at the time said agreement to
3 purchase was made, and at the time said ten thousand dollars was paid, did falsely declare and represent to plaintiff that said mining claim was of great value, to wit, of the value of ten thousand dollars or more, and that there was in said mining claim two thousand tons of valuable ore in sight—that is, exposed to view—and that said ore was of great value, and did then represent and declare to plaintiff that certain bodies of ore exposed in the openings, cuts, winzes, drifts, and cross-cuts in said mine were solid and continuous bodies of ore, both in length and depth; and, further, that no work had been done in or about said mining claim or the openings therein except what was visible to the eye, to show, or which did show, that said ore bodies did not continue, both in length and depth.

And plaintiff avers that said representations were false, as the defendant then well knew, and were designed and intended to induce plaintiff to purchase said mining claim, and were made to
4 cheat and defraud plaintiff.

That it was false, as defendant well knew, that said mine was of great or any value, or that there were two thousand tons of

ore in the said mining claim exposed to view or otherwise, of great value or of any value, or that there were any more than one hundred tons of ore in the said mine of any value.

That it was false, as defendant well knew, that the bodies of ore exposed in said mine were solid or continuous in length or depth; but, on the contrary, said ore bodies were not solid and did not continue in length or depth, as defendant at the time well knew, he having before then explored the same with drills and other tools and discovered the fact that said ore bodies were hollow and of limited length and depth, and did not continue downward, upward, or in length and depth.

That it was false, as defendant well knew, that no work had
5 been done in or about said mining claim and the opening therein to show, or which did show, that said ore bodies did not continue in length and depth; on the contrary, as defendant then well knew, work had been done on said mining claim, and in the openings therein to show, and which at the time said work was done did show, that said ore bodies did not continue in length or depth, but terminated within a few inches of the face of said openings, which work and all evidence thereof defendant obliterated, covered up, and concealed from view with the fraudulent intent and purpose aforesaid.

And plaintiff avers that it accepted the representations and statements of the defendant aforesaid as truth, and relied upon the same as true, and believed that said mining claim was valuable as represented, and that said ore bodies continued in length and depth; and, so relying and believing, made the said agreement to pur-
6 chase and paid the said sum of money, to wit, ten thousand dollars, in faith and reliance upon the truth of said representation so made by defendant, and was deceived, misled, cheated, and defrauded and injured thereby.

That said mining claim, if said representations had been true, was well and reasonably worth the sum of ten thousand dollars, but as the truth developed it was discovered and is shown that said mining claim is of no value whatever.

Wherefore plaintiff avers that because of said false and fraudulent representations it has been damaged in the sum of ten thousand dollars.

And plaintiff further avers that, relying upon the truth of the representations made by defendant in manner, tenor, and effect as aforesaid, it was induced to lay out and expend, and did lay out and expend, in about the mining of the ores in said mine and in
7 and about preparing for the transportation and reduction thereof, and in and about necessary improvements upon said mine, a large sum of money, to wit, five thousand dollars—

Whereby plaintiff has been damaged in the sum of five thousand dollars. And complainant, further complaining, avers that said agreement, because of the aforesaid false and fraudulent representations, is fraudulent and should be annulled and set aside and the parties thereto restored to the rights which they severally enjoyed before the same was made, and to this end plaintiff has executed, in due

form, a good and sufficient deed of conveyance, whereby and wherein it has conveyed to the said defendant the said mining claim and re-invested in the said defendant right and title thereto as fully as the same was invested in him before the said agreement of purchase was made, which said deed defendant now brings into court and
8 deposits the same in court for the use of defendant, and to be delivered to him when the court shall have so adjudged and upon his performing the conditions of the judgment which the court shall render herein.

Wherefore plaintiff prays judgment against the said defendant for the sum of fifteen thousand dollars;

That the said agreement to purchase the mine aforesaid and the deed executed in pursuance thereof by defendant to plaintiff be annulled and set aside and the parties thereto be restored to their original rights;

And for costs of suit. Plaintiff prays for general and such relief as in equity and good conscience may seem meet.

REDDY & CONKLING AND
J. W. P. LAIRD,
Attorneys for Plaintiff.

9 STATE OF CALIFORNIA, } ss.:
County of Inyo, }

H. M. Yerington, being duly sworn, says that he is an officer of The Southern Development Company of Nevada, plaintiff above named, to wit, president thereof; that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

H. M. YERINGTON.

Subscribed and sworn to before me this 7th day of May, 1884.
[SEAL.] A. R. CONKLIN,
Notary Public.

Clerk's Certificate.

OFFICE OF THE COUNTY CLERK OF INYO COUNTY,
STATE OF CALIFORNIA.

I, Thomas Crough, county clerk of the county of Inyo, State of California, and clerk of the superior court in and for said
10 county, do hereby certify the foregoing to be a full, true, and correct copy of the complaint in case of the Southern Development Company of Nevada *vs.* Frank Silva, filed in my office on the 8th day of May, A. D. 1884.

Witness my hand and the seal of said court this 30th day of July, A. D. 1884.
[SEAL.] THOMAS CROUGH,
County Clerk.

(Endorsed:) Filed May 8th, 1884. Thomas Crough, clerk.

11 *Summons.*

In the Superior Court of the County of Inyo, State of California.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiff,

vs.

FRANK SILVA, Defendant.

Action brought in the superior court of the county of Inyo, State of California, and the complaint filed in the office of the clerk of said county.

Rendy & Conklin and J. W. P. Laird, plaintiff's attorneys.

The people of the State of California send greeting to Frank Silva, defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the superior court of the county of Inyo, State of California, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county; or, if served elsewhere, within thirty days. The said action is brought to recover judgment against defendant and in favor of plaintiff for the sum of fifteen thousand dollars damages for fraudulently selling the Sterling mine, in New Cosa mining district, in said county and
12 State, and for misrepresenting the same and the value thereof, and for damages in working said mine and preparing to reduce the ores thereof, and for a decree setting aside the deed therefor made by defendant to plaintiff, and for general relief and costs of suit, all of which will more fully appear by the complaint filed herein, to which reference is hereby made.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for the sum of fifteen thousand dollars and the relief prayed for in said complaint, together with costs of suit.

Given under my hand and the seal of the superior court of the county of Inyo, State of California, this eighth day of May, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] THOMAS CROUGH, *Clerk.*

13 OFFICE OF THE SHERIFF OF THE COUNTY OF INYO.

I hereby certify that I received the within summons on the 8th day of May, 1884, and personally served the same on the 9th day of May, 1884, on Frank Silva, being the defendant named in said summons, by delivering to said defendant personally, in the county of Inyo, a copy of said summons and a true and correct copy of the complaint in the action named in said summons attached to said copy of summons.

Dated this 10th day of May, 1884.

STEPHEN G. GREGG, *Sheriff,*
By DANIEL CROUGH, *Deputy Sheriff.*

(Endorsed:) Filed May 10th, 1884. Thomas Crough, clerk.

14 *Affidavit for Injunction.*

STATE OF CALIFORNIA, } ss:
County of Inyo, }

In the Superior Court of the County of Inyo, State of California.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiff,

vs.

FRANK SILVA, Defendant.

A. R. Conklin, being duly sworn, says he is one of the attorneys for the plaintiff, The Southern Development Company of Nevada, in this action, which is sueing for the recovery of the sum of fifteen thousand dollars, as mentioned and set forth in the complaint filed herein; that the said plaintiff is a corporation having its place of business in the State of Nevada, and none of its officers are within the county of Inyo, which is the county where I reside, and I therefore make this affidavit.

I have read the complaint filed in this action and known the contents thereof, and I have information as to all the matters
15 stated therein, which information is derived from statements made to me by H. M. Yerington, president of said plaintiff, and from admissions made by the defendant herein, and from such information I believe such matters to be therein truly stated and such complaint to be true; and affiant further states that the said sum of ten thousand dollars was paid by plaintiff to defendant for said mining claim, as in said complaint set forth, as follows: The sum of twenty-five hundred dollars in cost and the sum of seven thousand five hundred dollars in a certificate of deposit, No. 24421, given by Wells, Fargo & Company's Bank, dated February 15th, 1884, and payable to Frank Silva, the defendant herein, or to his order; and affiant further states that the said certificate of deposit is now held and owned by said defendant and in his possession or in the possession of his agent, one J. C. Eddy, in Darwin, in said county, as affiant has every reason to believe; and affiant
16 further states that said defendant or his said agent will dispose of said certificate of deposit or transfer the same unless they be restrained and enjoined by this honorable court from so doing.

That said defendant is insolvent and unable to respond to and pay any judgment which may be rendered against him for damages in said action.

That plaintiff is without any adequate relief at law; that the complaint in said action is hereby referred to and made a part of this affidavit, and affiant prays that an order of this court be made enjoining said defendant and his agent and agents from disposing of and transferring said certificate of deposit; all of which is true, to the best of his knowledge and belief.

A. R. CONKLIN.

Subscribed and sworn to before me this 10th day of May, 1884.
[SEAL.] THOMAS CROUGH,
County Clerk.

(Endorsed:) Filed May 10, 1884. Thomas Crough, clerk.

17 *Undertaking on Injunction.*

In the Superior Court of the State of California in and for the County of Inyo.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiff,

vs.

FRANK SILVA, Defendant.

Whereas the above-named plaintiff has commenced, or is about to commence, an action in the superior court of the State of California in and for the county of Inyo against the above-named defendant, and is about to apply for an injunction in said action against the said defendant enjoining and restraining him from the commission of certain acts, as in the complaint and affidavit filed in the said action is more particularly set forth and described:

Now, therefore, we, the undersigned, residents of the county of Inyo, in consideration of the premises and of the issuing of
18 said injunction, do jointly and severally undertake in the sum of one thousand dollars and promise to the effect that in case said injunction shall issue the said plaintiff will pay to the said party enjoined such damages, not exceeding the sum of one thousand dollars, as such party may sustain by reason of the said injunction, if the said court finally decide that the said plaintiff was not entitled thereto.

Dated this tenth day of May, A. D. 1884.

A. R. CONKLIN. [SEAL.]
O. I. MAIRS. [SEAL.]

STATE OF CALIFORNIA, } *ss:*
County of Inyo, }

A. R. Conklin and O. I. Mairs, the sureties whose names are subscribed to the above undertaking, being, severally, duly sworn, each for himself, says that he is a resident and freeholder within the county of Inyo, State of California; that he is worth the sum in the said undertaking specified as the penalty thereof over and
19 above all his just debts and liabilities, exclusive of property exempt from execution.

A. R. CONKLIN.
O. I. MAIRS.

Subscribed and sworn to before me this tenth day of May, A. D. 1884.

[SEAL.] THOMAS CROUGH,
County Clerk.

(Endorsed:) Filed May 10th, 1884. Thomas Crough, clerk.

Approved this tenth day of May, A. D. 1884.

JOHN A. HANNAH, *Judge.*

20 *Order Denying Writ of Injunction.*

In the Superior Court of the County of Inyo, State of California.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiff,

vs.

FRANK SILVA, Defendant.

Upon filing the complaint and affidavit in the above-entitled action for the issuance of an injunction herein, as therein prayed for, and upon filing and approval of a good and sufficient bond therefor, and the said application for said injunction against said defendant and others, enjoining them from doing the acts in said affidavit set forth after argument, having been submitted to the court, and the court being fully advised in the premises, it is hereby ordered that the said writ of injunction be denied and refused, it appearing to said court that said plaintiff has a complete and adequate remedy at law therein.

Dated May 10th, 1884.

JOHN A. HANNAH,
Superior Judge.

21 (Endorsed:) Filed May 10, 1884. Thomas Crough, clerk.

Demurrer to Complaint.

In the Superior Court of the County of Inyo, State of California.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiff,

vs.

FRANK SILVA, Defendant.

The defendant in the above-entitled action demurs to the complaint filed in said action, and for cause of demurrer alleges that said complaint does not state facts sufficient to constitute a cause of action.

GEO. M. GILL,
Attorney for Defendant.

(Endorsed:) Filed May 19th, 1884. Thomas Crough, clerk.

22 *Petition for Removal.*

In the Superior Court of the State of California in and for the County of Inyo.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Pl'ff,

vs.

FRANK SILVA, Def't.

To the honorable judge of the superior court of the State of California in and for the county of Inyo:

The petition of the plaintiff above named, The Southern Development Company of Nevada, respectfully shows that it is a body corporate, created, organized, and existing under and by virtue of the laws of the State of Nevada, having its principal place of business in said State, and was at the commencement of this suit and now is a citizen and resident of said State.

That at the time of the commencement of this suit defendant, Frank Silva, was and still is a citizen of the State of California.

That the matter in dispute in this action exceeds, exclusive
23 of costs, the sum or value of five hundred dollars.

Wherefore petitioner prays that this suit be removed into the circuit court of the United States for the district of California, and herewith presents and files a bond in accordance with the act of Congress in such case made and provided.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA,
By H. M. YERINGTON, *President.*

STATE OF NEVADA, }
County of Ormsby, } *ss:*

H. M. Yerington, being duly sworn, says: I am an officer of the Southern Development Company of Nevada, the plaintiff above named, to wit, the president thereof; I have read the foregoing petition and know the contents thereof, and the same is true of my own knowledge.

H. M. YERINGTON.

Subscribed and sworn to before me this 15th day of July, 1884.
[SEAL.] JAMES E. DEALY,
Notary Public.

(Endorsed:) Filed July 18th, 1884. Thomas Crough, clerk.

24 *Bond for Removal.*

Know all men by these presents that we, the Southern Development Company of Nevada, as principal, and A. R. Conklin and O. I. Mairs, as sureties, are hereby held and firmly bound unto Frank

Silva in the penal sum of five hundred dollars; for the payment of which, well and truly to be made, we and each of us bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is that whereas the above-named The Southern Development Company of Nevada is about to petition the superior court of the State of California in and for the county of Inyo for the removal of the suit pending in said court, wherein the Southern Development Company of Nevada is plaintiff and the said Frank Silva is defendant, into the circuit court of the United States for the district of California: Now, therefore, if the said Southern Development Company of Nevada shall enter and file or cause to be entered and filed in the circuit court of the United
25 States in and for the district of California, on the first day of its session next to be held, a copy of the record, process, and pleadings in said suit, and shall pay all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into said United States court, then this obligation shall be void; otherwise in force.

Dated this 15th day of July, 1884.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA,
By H. M. YERINGTON, *Pres't.* [SEAL.]
A. R. CONKLIN. [SEAL.]
O. I. MAIRS. [SEAL.]

STATE OF CALIFORNIA, } ss:
County of Inyo, }

A. R. Conklin and O. I. Mairs, the sureties named in the foregoing bond, being duly sworn, says, each for himself and
26 not one for the other, that he is a resident of the State of California and a property holder therein, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities, exclusive of property by law exempt from execution, and that he has property in the State of California liable to execution of the value of more than five hundred dollars.

A. R. CONKLIN.
O. I. MAIRS.

Subscribed and sworn before me this 18th day of July, 1884.
[SEAL.] JOHN W. P. LAIRD,
Notary Public.

(Endorsed:) Approved by me this 18th day of July, 1884. John A. Hannah, superior judge. Filed July 18th, 1884. Thomas Crough, clerk.

27 *Notice of Motion.*

In the Superior Court of the State of California in and for the County of Inyo.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiff,

vs.

FRANK SILVA, Defendant.

The defendant and his attorney will please take notice that, upon the petition and bond (copies of which are herewith served upon you) and upon files, papers, proceedings, and records in the above-entitled action, we shall move this honorable court, at the court-room thereof, in the county of Inyo, on the twenty-sixth day of July, 1884, at the opening of the court on that day or as soon thereafter as counsel can be heard, to make an order for the removal of the above-entitled cause to the United States circuit court for the district of California upon the following grounds: That the plaintiff herein
28 is and was at the commencement of this suit a resident and citizen of the State of Nevada, and the defendant at the commencement of this suit was and still is a citizen of the State of California.

The motion will be made upon the papers on file in the case and the petition and bond hereto attached.

Dated July 18, 1884.

REDDY & CONKLIN AND
J. W. P. LAIRD,
Attorneys for Plaintiff.

To Frank Silva, defendant, and his attorney of record, Geo. M. Gill.

(Endorsed:) Filed July 18th, 1884. Thomas Crough, clerk.

29 *Affidavit of A. R. Conklin.*

STATE OF CALIFORNIA, } ss:
County of Inyo, }

In the Superior Court for the State of California in and for the County of Inyo.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiffs,

vs.

FRANK SILVA, Defendant.

A. R. Conklin, of said Inyo county, being duly sworn, says that he is a male citizen of the United States, over the age of eighteen years, to wit, of the age of forty-nine years, and was at all the times hereinafter mentioned; that he is not a party to the above-entitled

action; that on the eighteenth (18) day of July, 1884, he mailed and deposited in the United States post office at Independence, Inyo county, California, a copy of the petition, notice of motion, and bond (the original of which is hereto attached) for the removal
30 of the above-entitled cause to the circuit court of the United States for the district of California, enclosed in an envelop- and addressed and directed to George M. Gill, Esq., attorney-at-law, at Bishop Creek, Inyo county, California, and prepaid the postage thereon; that affiant is one of the attorneys of record for the plaintiff in said cause, and resides at Independence, in said county and State; that George M. Gill, Esq., is the attorney of record for the defendant in the above-entitled action, and resides at and has his place of business in Bishop Creek, in said county and State, and that there is a regular communication daily by the United States mails from said post office at Independence, where the same was deposited as aforesaid, to said Gill's place of residence and business, to wit, Bishop Creek, in said county and State.

A. R. CONKLIN.

Subscribed and sworn to before me this 18th day of July, 1884.
[SEAL.] THOMAS CROUGH,
County Clerk.

31 (Endorsed:) Filed July 18th, 1884. Thomas Crough, clerk.

Order for Removal.

In the Superior Court of the State of California in and for the County of Inyo.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Pl'ff,

vs.

FRANK SILVA, D'f't.

Upon reading and filing the petition of The Southern Development Company of Nevada, plaintiff in the above-entitled action, and upon filing the bond, and good and sufficient sureties having been offered by the said plaintiff, and the same being by me, the judge of said court, duly accepted and approved, it is hereby ordered that no further proceedings be had in this cause in this court, and the removal of the same to the circuit court of the United States for the district of California be, and the same is hereby, allowed and
32 ordered in accordance with the aforesaid petition and the statutes of the United States in such case made and provided.

Dated July 28th, 1884.

N. D. ARNOT, JR.,
Superior Judge, Presiding.

(Endorsed:) Filed July 28th, 1884. Thomas Crough, clerk.

Certificate of Clerk to Transferred Record.

STATE OF CALIFORNIA, } *ss:*
County of Inyo, }

I, Thomas Crough, county clerk of the county of Inyo, State of California, and *ex officio* clerk of the superior court of said county, do hereby certify that the foregoing are true, full, and correct copies of the pleadings, process, orders, and papers of the originals now on file in my office in that certain suit wherein The Southern Development Company of Nevada is plaintiff and Frank Silva is defendant, consisting of the complaint filed in said suit, the summons
33 issued therein, the affidavit for an injunction, the undertaking on injunction, the order denying writ of injunction, the demurrer to the complaint, the petition for removal of said suit to the United States court, the bond filed therefor, the notice of motion for removal and removal, and the affidavit of the service of said notice and the order for the removal of said suit to the circuit court of the United States for the district of California.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the town of Independence, in said county and State, on this the first day of August, A. D. 1884.

[SEAL.] THOMAS CROUGH,
County Clerk and ex Officio Clerk Superior Court.

(Endorsed:) Filed August 4, 1884. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

34 At a stated term, to wit, the November term, A. D. 1884, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 12th day of January, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order Overruling Demurrer.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA
vs.
FRANK SILVA. } No. 3431.

On motion on behalf of the defendant herein, it is ordered that the demurrer be submitted to the court without argument of counsel. Under rule 42 of this court it is ordered that the demurrer of defendant, Frank Silva, be, and the same is hereby, overruled without any examination of the record, with leave to said defend-
35 ant to answer on the payment of twenty dollars on or before the next rule day.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 8th day of August, A. D. 1887.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON,
Deputy Clerk.

36 At a stated term, to wit, the February term, A. D. 1885, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 9th day of March, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Honorable George M. Sabin, U. S. district judge of Nevada, sitting as circuit judge.

Order Setting Aside Order Overruling Demurrer.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA
vs.
FRANK SILVA. } No. 3431.

This cause came on regularly this day to be heard upon the motion for an order setting aside and vacating the order heretofore entered herein overruling the demurrer herein and taxing costs against the defendant.

37 By consent of counsel it is ordered that said motion be, and the same hereby is, granted, and that the order made and entered January 12th, 1885, overruling said demurrer, be set aside and vacated. It is further ordered that the plaintiff have leave to amend its complaint herein within twenty days.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 8th day of August, A. D. 1887.

L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON,
Deputy Clerk.

38 *Amended Bill.*

In the Circuit Court of the United States, Ninth Circuit, in and for the District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,

vs.

FRANK SILVA, Defendant.

Now comes said complainant, by P. Reddy, Esq., its solicitor, and, by leave of court first had and obtained, reforms its bill and files

this its amended bill herein, and for cause of complaint represents and states to this honorable court as follows, to wit:

I.

Your orator respectfully states and represents to this honorable court that at all the times hereinafter mentioned the complainant, The Southern Development Company of Nevada, was and still is a corporation duly created and existing under and by virtue of the laws of the State of Nevada.

39

II.

Your orator further represents and states that at the special instance and request of the said defendant it did, on or about the 15th day of February, 1884, bargain with the said defendant to buy and did buy of him, at and for the agreed price and sum of ten thousand dollars, that certain mining claim situated about ten miles southward from the town of Darwin and on the west side of the Argus range of mountains, in the New Cosa mining district, county of Inyo, State of California, commonly known and designated as the Sterling mine, said claim being fifteen hundred feet in length along the lode or vein and six hundred feet in width, the defendant being then and there the owner of said claim.

III.

Your orator further represents and states that it then paid to the defendant, as and for the purchase-money and price of said mine and in pursuance of said agreement, the said sum of
40 $10,000.00, and the defendant then executed and delivered to plaintiff his deed of conveyance of said mining claim.

IV.

Your orator further represents and states that the defendant, to induce it to buy said mining claim, and to pay therefor the said sum of $10,000.00, before and at the time said agreement to purchase was made, and at the time said ten thousand dollars was paid, did falsely declare and represent to complainant, with the intention to deceive this complainant, that said mining claim was of great value, to wit, of the value of ten thousand dollars and more, and that there was in said mining claim two thousand tons of valuable ore in sight and exposed to view, and that said ore was of great value, and did then and there falsely represent and declare to complainant that certain bodies of ore exposed in the openings, cuts, winzes, drifts, and cross-cuts in said mine were solid and continuous bodies
41 of ore, both in length and depth; and, further, that no work had been done in or about said mining claim or the openings therein, except what was visible to the eye, to show, or which did show, that said bodies of ore did not continue both in length and depth; all of which representations and statements your orator

avers were false, as the defendant then and there well knew, and were so made by defendant to induce complainant to purchase said mining claim, and were so made to cheat and defraud this complainant.

Your orator represents and states that it was false, as defendant well knew, that said mine was of great value or of any value, or that there were two thousand tons of ore in said mining claim, exposed to view or otherwise, of great value or of any value, or that there were more than one hundred tons of ore in said mine of any value.

That it was false, as defendant well knew, that the bodies
42 of ore exposed in said mine were solid or continuous in length or depth; but, on the contrary, your orator represents and states that said ore bodies were not solid and did not continue in length or depth, as the defendant at the time well knew, he having before then explored the same with drills and other tools and discovered the fact that said ore bodies were hollow and of limited length and depth and did not continue downward, upward, or in length or depth.

Your orator represents and states that it was false, as defendant then and there well knew, that no work had been done in or about said mining claim or the openings therein to show or which did show that said ore bodies did not continue in length or depth; but, on the contrary, as defendant well knew, your orator represents and states that work had been done on said mining claim and in the openings therein to show, and which at the time said work was done
43 did show, that said ore bodies did not continue in length or depth, but terminated within a few inches of the face of said openings, which work and all evidence thereof defendant obliterated, covered up, and concealed from view with the fraudulent intent and purpose aforesaid.

V.

Your orator respectfully represents and states that it accepted the representations and statements of defendant aforesaid as truth, and believed that said mining claim was valuable, as represented, and that said ore bodies continued in length and depth, and, so relying and believing, made the said agreement to purchase and paid the said sum of money, to wit, ten thousand dollars, in faith and in reliance upon the truth of said representations so made by defendant, and was deceived, misled, cheated, and defrauded and injured thereby.

VI.

Your orator represents and states that said mining claim, if
44 said representations had been true, was well and reasonably worth the sum of ten thousand dollars, but as the truth developed it was discovered and shown that said mining claim was and is of no value whatever.

VII.

Your orator further represents and states to this honorable court that said agreement, because of the aforesaid false and fraudulent

representations, is fraudulent and should be annulled and set aside and the parties thereto restored to the rights which they severally enjoyed before the same was made; and to this end your orator has executed, in due form, a good and sufficient deed of conveyance, whereby and wherein it has conveyed to the said defendant the said mining claim and reinvested in the said defendant the right and title thereto as fully as the same was invested in him before the agreement of purchase was made, which said deed your orator now brings into court and deposits the same in court for the use of defendant and to be delivered to him when the court shall have so adjudged and upon his performing the conditions of the decree which the court shall render herein.

Wherefore complainant prays that the said agreement to purchase the mine aforesaid and the deed executed in pursuance thereof by defendant to complainant be annulled and set aside and the parties thereto be restored to their original rights.

Complainant prays for such other and further relief as this court may deem just and equitable.

P. REDDY,
Solicitor for Complainant.

STATE OF NEVADA, }
County of Ormsby, } ss:

H. M. Yerrington, being duly sworn, says that he is an officer of complainant, to wit, the president of Southern Development Company of Nevada, a corporation, complainant in the above-entitled action; that he has read the foregoing amended bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

H. M. YERINGTON, *President.*

Subscribed and sworn to before me this 30th day of March, 1885
[SEAL.] MILLIS G. CLARKE,
Notary Public.

(Endorsed:) Received this 2nd of April, 1885, the within so-called amended bill, but expressly reserve all legal and proper objections to its being filed in this cause and the attempt hereby made to require defendant to answer in two distinct actions & suits, whereas the defendant has been heretofore served with process to answer in one action & suit only, and whereas plaintiff has also on this day served def't with what purports to be another and seperate complaint in this same action. Langhorn & Miller, att'ys for def't. Filed April 2d, 1885. L. S. B. Sawyer, clerk, by F. D. Monckton, dep. clerk.

47 *Demurrer to Amended Bill of Complaint.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE SOUTHERN DEVELOPMENT CO. OF NEVADA, Pl'ff,
vs.
FRANK SILVA, Def't. } No. —.

The demurrer of the defendant, Frank Silva, to the amended bill of complaint in the above-entitled suit.

This defendant, by protestation, not confessing any of the matters in and by said amended bill complained of to be true in manner and form as set forth, says that he is advised that there is no matter or thing in said amended bill good and sufficient in law to call this defendant to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and this defendant does demur accordingly, and for causes of demurrer says—

48 1st. That said amended bill, in case the same were true, contains no matter of equity whereon this court can ground a decree or give complainant any relief as against this defendant.

2nd. That it appears by the said complainant's amended bill that this honorable court has no jurisdiction over the person of this defendant or over the matters and things in and by the said amended bill charged and set up.

Wherefore and for divers other errors and imperfections in said amended bill contained and appearing upon the face thereof, this defendant doth demur thereunto, and humbly crave- the judgment of this honorable court whether he should be made to make any answer thereunto otherwise than as aforesaid, and that he be hence dismissed with his costs — charges in this behalf most wrongfully sustained.

LANGHORNE & MILLER AND
R. S. MINER, *Sol's for Def'd't.*

J. H. MILLER, *Of Counsel.*

49 STATE OF CALIFORNIA, } *ss:*
County of Inyo, }

Frank Silva, being duly sworn, says that he is the defendant in the above-entitled suit; that the foregoing demurrer is not interposed for delay.

FRANK SILVA.

Subscribed & sworn to before me this 11th day of May, A. D. 1885.

[SEAL.] THOS. C. BALAND,
Notary Public.

3—1210

Certificate of Counsel.

In my opinion the foregoing demurrer is well founded in point of law.

May 14th, 1885.

J. H. MILLER,
Counsel for Def't.

(Endorsed:) Service of the within demurrer is hereby admitted this 23d day of May, 1885. P. Reddy, attorney and solicitor for pl'ff.

(Endorsed:) Filed May 23d, 1865. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

50 *Order Confessing Demurrer to Amended Bill.*

At a stated term, to wit, the February term, A. D. 1885, of the circuit court of the United States of America, of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Wednesday, the 10th day of June, in the year of our Lord one thousand eight hundred and eighty-five.

Present: Honorable George M. Sabin, U. S. district judge of Nevada.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA
vs.
FRANK SILVA. } No. 3431.

On motion of P. Reddy, Esq., solicitor for the complainant herein, it is ordered that the demurrer to the amended bill of complaint be confessed as to want of statement of cause of suit, and that complainant be allowed ten days to amend.

I hereby certify that the foregoing is a full, true, and correct
51 copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 8th day of August, A. D. 1887.

L. S. B. SAWYER, *Clerk*,
[SEAL.] By F. D. MONCKTON,
Deputy Clerk.

52 *2nd Amended Bill.*

In the Circuit Court of the United States, Ninth Circuit, in and for the District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,

vs.

FRANK SILVA, Defendant.

Now comes the said complainant, by P. Reddy, Esq., its solicitor, and, by leave of court first had and obtained, files this its second amended bill herein, and for cause of complaint represents and states to this honorable court as follows, to wit:

I.

Your orator respectfully states and represents to this honorable court that at all the times hereinafter mentioned the complainant, The Southern Development Company of Nevada, was, ever since has been, and still is a corporation duly created and existing under and by virtue of the laws of the State of Nevada.

II.

53 That at all the times hereinafter mentioned the defendant, Frank Silva, was, ever since has been, and still is a citizen of the State of California and a resident thereof.

III.

That on or about the 15th day of February, 1884, the said defendant, Frank Silva, offered to sell to this complainant for the sum of $10,000.00 that certain mining claim situate, lying, and being in the New Coso mining district, county of Inyo, State of California, commonly known and designated as the Sterling mine, said mining claim being on the west side of the Argus range of mountains and about ten miles in a southerly direction from the town of Darwin. Said mining claim is 1,500 feet in length along the lode and is 600 feet in width.

IV.

That in order to induce this complainant to purchase said mining claim and to pay him the sum of $10,000.00 therefor the said defendant, with intent to deceive and defraud the said com-
54 plainant, did knowingly, designedly, and fraudulently represent to this complainant that said mining claim was of great value, to wit, of the value of $10,000.00 and more, and that there were in said mine 2,000 tons of valuable ore in sight, he using the term "ore in sight," and the same being understood by complainant in the sense in which that term is universally used and understood by miners and other persons engaged in measuring ore simi-

larly situated in the Pacific States and Territories, and that the ore exposed in the openings, cuts, drifts, shafts, and winzes in and upon said mining claim were continuous bodies of ore both in length and depth—that is to say, that no work had been done in or about or upon said mining claim to show or which did show that said ore did not continue both in length and depth.

V.

55 That at a certain place in the said mining claim called the ore chamber a large excavation had been made—that is to say, about 20 feet in length and about 16 feet in depth and about 3 feet in width at the top and about 9 feet in width near the bottom; that the sides of said chamber were composed of ore of a very high grade and value; that the bottom of this chamber or excavation was covered with loose ore and rock and vein matter mixed together to such a depth that the character of the rock or matter composing the bottom of said chamber could not be seen or determined and was unknown to this complainant until the time hereinafter named; that there appeared to be a lode or vein exposed by said excavating more than 3 feet wide at the top, which rapidly increased in width as depth was attained, and that on sinking on it in this chamber it had increased, as shown in the opening, from something over 3 feet wide at the top to over 9 feet in width near the bottom.

56 VI.

That said Frank Silva did then and there, with intent to deceive and defraud the said complainant, knowingly and designedly, falsely and fraudulently, represent and pretend to this complainant that the bottom of said chamber was composed of ore of the same kind and value as the ore on the sides of said chamber, and that the vein or lode and ore continued downwards from the bottom of said chamber, apparently increasing in width, and that the thickness of the ore on the sides had not been explored, and that its thickness was unknown; that there was at least 500 tons of valuable ore exposed by the excavation last above described, or, in mining parlance, 500 tons of valuable ore "in sight" at that place.

VII.

57 That at a point on said mining claim near the point of location an open cross-cut had been made on the lode, which cut what appeared to be a valuable vein of ore about 18 inches in width and which to all appearances continued downwards and laterally from said cut, and the development was such as to induce the belief that large quantities of ore could be obtained from said ore vein; that said defendant then and there, with intent to deceive and defraud this complainant, did knowingly and designedly, falsely and fraudulently, represent and pretend to this complainant that no work had been done in or upon or about said ore vein to show or which

did show that said ore vein did not continue downwards or lengthwise from said cut.

VIII.

That said defendant did further falsely and fraudulently represent and pretend to this complainant that he had shown and pointed out to this complainant all cuts, openings, tunnels, drifts, shafts, winzes, and work of every kind and nature which had ever been
58 made in said mine or mining claim, and that he had fully and truly disclosed and described to this complainant all that he had discovered and knew concerning the extent of the work and the ore in said mine.

IX.

That said mining claim, as could be seen on the surface, in the excavations and openings therein, and from what was visible in and about said mining claim, appeared to be well worth said sum of $10,000.00, and there appeared to be about 2,000 tons of ore in sight, and the ore bodies and strata seemed to be continuous, as represents- by said defendant.

X.

That this complainant believed all of said representations so made by the said defendant to be true and relied upon them, and that, believing in and relying upon said representations, it was thereby induced to purchase and did purchase on the faith of said representations said mining claim from said defendant for the sum
59 of $10,000.00 in the manner following, to wit: This complainant, on the 15th day of February, 1884, drew its check on the Bank of California in favor of said defendant for the sum of $10,000.00, which said check was in the words and figures following, to wit:

"No. 50. VIRGINIA, NEV., *February 15th*, 1884.

"Agency of the Bank of California, pay to Frank Silva or order ten thousand dollars.

"$10,000.00. SOUTHERN DEV'T CO. OF NEVADA,
"By H. M. YERINGTON.
"G. F. FORD, *Secretary.*"

And delivered the same to said defendant; that this complainant, through its president and duly authorized agent, H. M. Yerington, accompanied the said defendant to Wells, Fargo & Company's bank, at Carson City, in the State of Nevada, and then and there introduced the said defendant to E. F. Pierce, the agent then and there of said bank; whereupon the said defendant endorsed and delivered the said check to said Wells, Fargo and Company's bank, and
60 the said complainant, through its said president, H. M. Yerington, caused the said bank then and there to pay to said defendant the sum of $2,500.00, in gold coin, and to issue to said defendant

a certificate of deposit of $7,500.00 in the words and figures following, to wit:

"*Certificate of Deposit.*

"No. 24425.

"[Wells, Fargo & Co., United States. Capital, $6,250,000 dollars.]

"WELLS, FARGO & Co.,
"CARSON CITY, NEV., *Feb'y 15th*, 1884.

"Frank Silva has deposited with us seventy-five hundred dollars, payable to the order of himself on return of this certificate properly endorsed.

"$7,500.

"(Signed) E. F. PIERCE, *Ag't.*"

That the said Bank of California afterwards, to wit, on or about February 18th, 1864, duly honored and paid the amount of money mentioned in said check, to wit, the sum of ten thousand dollars, to said Wells, Fargo & Company; that the said defendant had not, at the time of the delivery of said check to or by him, or at the time
61 of the delivery of said $2,500.00 to him, or at the time of the delivery of the said certificate of deposit to him, any money on deposit with the said Wells, Fargo & Company; that the said defendant at the time of receiving said check from this complainant delivered to this complainant a deed of conveyance of the mining claim above mentioned for and in consideration of said sum of $10,000.00, and also at the same time and by the same deed of conveyance conveyed to this complainant certain other property in said New Coso mining district, county of Inyo, State of California, and described as follows: Commencing at the southeasterly boundary of the said Sterling mine and running thence in a southeasterly direction 1,500 feet in length and being 600 feet in width, commonly known and designated as the Vasco mine, and also that spring of water situate in said district about 10 miles south from the town of Darwin, at the foot of the Maturango Mountains, in the
62 Argus range of mountains, and known as the Sterling springs, and also that certain other spring of water situate at the foot of said Maturango Mountain, formerly known as the Harbin springs, but now known as the Sterling spring.

And that afterwards, to wit, on the 8th day of March, 1884, the said defendant, by deed of conveyance, conveyed to this complainant certain other property described in said deed as follows, to wit: All that certain vein, lode, or ledge of mineral-bearing rock situate in the New Coso mining district, Inyo county, State of California, about 10 miles southwesterly from the town of Darwin, on the west slope of the Argus range of mountains, being 1,500 feet in length northwesterly and southeasterly and 600 feet in width, and adjoining the Sterling mine on the east and parallel with the same, and known as the Sterling mine No. 2.

XI.

63 That the said defendant voluntarily offered to convey and did convey all of the above-described property, except the said Sterling mine, without any consideration whatever, representing to complainant that it might at some future time be of some value, and thereby induced this complainant to accept a conveyance of the same; that the said last-described property was and is of no value whatever, which fact the said defendant at all the times herein mentioned well knew.

XII.

That in truth and in fact, and as the said defendant at all the times herein mentioned well knew, the said Sterling mine was of no value whatever, and there was not in sight nor in fact in said mine 2,000 tons of valuable ore; that there were not more than 100 tons of ore in said mine; that said ore did not exceed the sum of $25 per ton in value; that the said ore bodies exposed in said mine
64 were not solid or continuous in length or depth, as the said defendant at all the times herein mentioned well knew; that work had been done in and upon said mine to show and which did show and discover to said defendant that the ore bodies and strata did not continue in length or depth, but that they terminated within a few inches of said openings, which work was by the said defendant hidden and concealed from view and not made known to the complainant, but was kept secret from it by him, the said defendant.

XIII.

That the bottom of the so-called ore chamber in said Sterling mine was not composed of ore of any kind, but was composed of limestone, the country rock, as the said defendant well knew, as he had extracted all of the ore; had sunk down some distance into the said lime rock, and demonstrated the fact that the said ledge, lode, or vein had terminated and did not continue downwards,
65 after which the said defendant covered the bottom of said chamber with ore, vein rock, and matter as above described. That in truth and in fact, and as the said defendant well knew, the vein or ore extended laterally from the walls of said chamber but a few inches, he having drilled holes through the ore and into the country rock, and thus discovered the extent of said ore, which drill holes said defendant filled up and concealed from view and kept secret from this complainant; that said defendant, by drills, drill holes, and other means, had discovered and knew that there was not more than one hundred tons of ore cut or opened in said mining claim.

XIV.

That said vein of ore cut and exposed in the open cut near the point of location of said mining claim, and which is above referred

to, did not continue in length or depth, as the defendant well
66 knew, as a shaft had been sunk down by him upon said vein upon the level of the floor of said open cut to where the said vein terminated, to wit, about six feet from the floor of said cross-cut, which shaft was afterwards filled up by him and all evidence of its existence concealed and kept secret from said complainant. The said defendant well knew that he had not shown or pointed out to complainant all of the works and openings in and upon said mining claim or fully or truly disclosed what he had discovered and knew concerning the extent of the work and the ore in said mining claim, but, on the contrary, carefully concealed the drill holes above mentioned or the existence thereof and the facts ascertained through them, and the fact that the bottom of the so-called ore chamber was composed of lime, and the fact that a shaft
67 had been sunk from the level of the open cut near the point of location, which showed that the ore vein exposed in said cut did not continue downwards or lengthwise from said open cut.

That the falsity of the said representations so made as aforesaid by defendant were not discovered or ascertained by the said complainant or known to it until on or about the first day of May, 1884, when the fact was discovered by work in the regular course of of mining in and upon said mining claim.

XV.

That immediately on the discovery of the falsity of the representations above stated, and before the commencement of this action, the said complainant made and executed and tendered to the said defendant a good and sufficient deed of conveyance of all the property conveyed by him to the said complainant, and then and there demanded of the said defendant a rescission of the said con-
68 tract of purchase and sale on the ground that this complainant was induced to enter into said contract and to make said purchase by the false representations above set forth and the fraud of the said defendant, and then and there demanded of the said defendant the delivery of said certificate of deposit to it on the ground that the possession of the same was obtained by the false representations and fraud above set forth, and that the same was the property and belonged to this complainant, and further demanded of said defendant the sum of $2,500.00, paid to him in gold coin by it in Carson City, on the ground that the same was obtained by fraud and the false representations above mentioned; that the said defendant, although then in the possession of the said certificate of deposit, and not having transferred or assigned the same, then — there refused, and has ever since refused, to rescind said contract or to restore to complain-t any of the money or the certificate of deposit received by him from said complainant on said sale.

69 XVI.

That this complainant has executed, in due form of law, a good and sufficient deed of conveyance conveying to said defendant all

the property ever conveyed by him to it, which said deed your orator now brings into court and deposits the same for the use of defendant and to be delivered to him when he shall see fit to accept the same or whenever the court shall so adjudge.

Wherefore complainant prays that said contract of sale and purchase in this bill set forth be rescinded, and that the said defendant be adjudged and decreed to restore to complainant all that he received under said contract, and that said deed of conveyance or such other deed of conveyance as the court may adjudge and decree may be thereupon delivered to him, and for such other and further relief as to this court may seem just and equitable and as the nature of the case may require.

P. REDDY,
Solicitor for Complainant.

70 STATE OF NEVADA, } ss:
County of Ormsby, }

H. M. Yerington, being sworn, says that he is an officer, to wit, the president, of complainant in the above-entitled action; that he has read the foregoing 2d amended bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

H. M. YERINGTON.

Subscribed and sworn to before me this 18th day of June, 1885.
[SEAL] T. J. EDWARDS,
Clerk & Com. U. S. Cir. Court, 9th Cir. & Dist. Nevada.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

S. R. O'Keeffe, being duly sworn, deposes and says that he is and was at all the times hereinafter mentioned a white male citi-
71 zen of the United States, above the age of 21 years, and not a party to the above-entitled cause; that he personally served the annexed second amended bill in the cause above entitled upon J. H. Miller, of the firm of Langhorne & Miller, one of defendant's solicitors, on the 22d day of June, 1885, by delivering to said Miller personally, on said day, in this city and county, at his office, No. 410 California St., R. 17, a copy of said second amended bill in said action.

S. R. O'KEEFFE.

Subscribed & sworn to before me this 22d day of June, 1885.
[SEAL.] E. H. THARP,
Notary Public.

(Endorsed:) Filed June 22d, 1885. L. S. B. Sawyer.

72 *Exceptions of Def't to 2nd Amended Bill.*

In the Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

THE SOUTHERN DEVELOPMENT CO. OF NEVADA, Complainant,

vs.

FRANK SILVA, Defendant.

Exceptions for scandal and impertinence, taken by Frank Silva, the above-named defendant, to the second amended bill of complaint of The Southern Development Company of Nevada, complainant above named.

First exception.

For that the following portion of said 2nd amended bill, to wit, from and including the word "he," on line 14, page 2, down to and including the word "Territories," on line 14, page 2, is scandalous and impertinent.

Second exception.

73 For that the following portion of said bill, to wit, commencing at the word "in," on line 29, page 4, to and including the word "Company," on line 2, page 6, is scandalous and impertinent.

Third exception.

For that the following portion of said bill, to wit, commencing at the word "that," on line 2, page 6, to and including the word "Company," on line 6, page 6, is scandalous and impertinent.

Fourth exception.

For that the following portion of said bill, to wit, from the words "and also," on line 10, page 6, to and including the word "spring," on line 23 of page 6, is scandalous and impertinent.

Fifth exception.

For that the following portion of said bill, to wit, from the words "and that," on line 23 of page 6, to and including the words and figures "No. 2," on line 1, page 7, is scandalous and impertinent.

Sixth exception.

For that the following portion of said bill, to wit, all of paragraph XI, on page 7, is scandalous and impertinent.

74 Seventh exception.

For that all the following portion of said bill, to wit, from the words "when the," on line 8 of page 9, to and including the word "claim," on line 9, page 9, is scandalous and impertinent.

In all which particulars this exceptant excepts to the said bill as scandalous and impertinent, and humbly insists that the said scandalous and impertinent matter ought to be expunged.

LANGHORNE & MILLER,
R. S. MINER,
Sol's for Def't.
J. H. MILLER, *Of Counsel.*

(Endorsed:) Service of the within exceptions is hereby admitted this 21st day of July, 1885. P. Reddy, sol. for pl'ff. Filed July 21, 1885. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

75 *Order of Reference to Master.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Defendant. } No. 3431.

On reading and filing defendant's exceptions to the 2nd amended bill of complaint herein and another good cause shown it is ordered that said bill of complaint and said exceptions thereto be, and the same are hereby, referred to S. C. Houghton, Esqr., master in chancery, to examine and proceed thereto within the time and according to the manner provided by law and the rules of this court.

July 21st, 1885.

SAWYER,
Circuit Judge.

(Endorsed:) Service of copy of within order is hereby admitted this 21st day of July, 1885. P. Reddy, sol. for pl'ff. Filed July 21, 1885. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

76 *Master's Report.*

In the Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA *vs.* FRANK SILVA. } No. 3431.

In the matter of the reference of the second amended bill for alleged scandal and impertinence.

To the honorable the circuit court of the United States for the ninth circuit and district of California:

In pursuance of an order of this honorable court made and entered in the above-entitled suit on the 21st day of July, A. D. 1885,

I, the undersigned, master in chancery of said court, having been attended by counsel for complainant and respondent in said suit, and having looked into the bill of complaint and considered the statements and charges therein alleged to be scandalous and
77 impertinent, do report:

In the bill under consideration none of the allegations specified in the exceptions are scandalous in the sense that they reflect upon any one.

Matter contained in a bill which serves to enlighten the court and to enable it to arrive at a clear understanding and determination of an issue raised and to grant an equitable decree upon the pleadings or upon the bill alone cannot be impertinet.

An allegation ought not to be expunged from a pleading as impertinent unless its impertinence clearly appears. An exception for impertinence must be supported *in toto* or it must fall altogether.

Following the principles above set forth, which I believe to be in accordance with well-established rules of chancery practice, I find, and do hereby report, that respondent's exceptions to the second amended bill herein are not, nor is either of them, well taken,
78 and that the matter of the bill pointed out in said exceptions is all pertinent and not scandalous.

Respectfully submitted, S. C. HOUGHTON,
Master, &c.

August 26, 1885.

Second Amended Bill of Complaint.

In the Circuit Court of the United States, Ninth Circuit, in and for the District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complain-t,

vs.

FRANK SILVA, Defendant.

Now comes the said complainant, by P. Reddy, Esq., its solicitor, and, by leave of court first had and obtained, files this its second amended bill herein, and for cause of complaint represents
79 and states to this honorable court as follows, to wit:

I.

Your orator respectfully states and represents to this honorable court that—all the times hereinafter mentioned the complainant, The Southern Development Company of Nevada, was, ever since has been, and still is a corporation duly created and existing — and by virtue of the laws of the State of Nevada.

II.

That at all the times hereinafter mentioned the defendant, Frank Silva was, ever since has been, and still is a citizen of the State of California and a resident thereof.

III.

That on or about the 15th day of February, 1884, the said defendant, Frank Silva, offered to sell to this complainant for the sum of $10,000.00 that certain mining claim situate, lying, and being in the New Coso mining district, county of Inyo, State of California, commonly known and designated as the Sterling mine, said
80 mining claim being on the west side of the Argus range of mountains and about ten miles in a southerly direction from the town of Darwin. Said mining claim is 1,500 feet in length along the lode and is 600 feet in width.

IV.

That in order to induce this complainant to purchase said mining claim and to pay him the sum of $10,000.00 therefor the said defendant, with intent to deceive and defraud the said complainant, did knowingly, designedly, and fraudulently represent to this complainant that said mining claim was of great value, to wit, of the value of $10,000.00 and more, and that there were in said mine 2,000 tons of value-ore in sight, [* he using the term "ore in sight," and the same being understood by complainant in the sense in which that term is universally used and understood by miners and other persons engaged in measuring ore similarly situated in the Pacific States and Territories,] and that the ore exposed in the openings, cuts,
81 drifts, shafts, and winzes in and upon said mining claim were continuous bodies of ore both in length and depth—that is to say, that no work had been done in or about or upon said mining claim to show or which did show that said ore did not continue both in length and depth.

V.

That at a certain place in the said mining claim called the ore chamber a large excavation had been made—that is to say, about 20 feet in length and about 16 feet in depth and about 3– feet in width at the top and about 9 feet in width near the bottom; that the sides of said chamber were composed of ore of a very high grade and value; that the bottom of this chamber or excavation was covered with loose ore and rock and vein matter mixed together to such a depth that the character of the rock or matter composing the bottom of said chamber could not be seen or determined, and was unknown to this complainant until the time hereinafter named; that there appeared to be a lode or vein exposed by said excavation
82 more than 3 feet wide at the top, which rapidly increased in width as depth was attained, and that on sinking on it in this chamber it had increased, as shown in the opening, from something over 3 feet wide at the top to over 9 feet in width near the bottom.

* 1st ex'n.

VI.

That said Frank Silva did then and there, with intent to deceive and defraud the said complainant, knowingly and designedly, falsely and fraudulently, represent and pretend to this complainant that the bottom of said chamber was composed of ore of the same kind and value as the ore on the sides of said chamber, and that the vein or lode and ore continued downwards from the bottom of said chamber apparently increasing in width, and that the thickness of the ore on the sides had not been explored and that its thickness was unknown; that there was at least 500 tons of valuable ore exposed by the excavation last above described; or, in mining parlance, 500 tons of valuable ore "in sight" at that place.

83

VII.

That at a point on said mining claim, near the point of location, an open cross-cut had been made on the lode, which cut what appeared to be a valuable vein of ore, about 18 inches in width, and which, to all appearances, continued downwards and laterally from said cut, and the development was such as to induce the belief that large quantities of ore could be obtained from said ore vein; that said defendant then and there, with intent to deceive and defraud this complainant, did, knowingly and designedly, falsely and fraudulently, represent and pretend to this complainant that no work had been done in or upon or about said ore vein to show or which did show that said ore vein did not continue downwards or lengthwise from said cut.

VIII.

That said defendant did further falsely and fraudulently represent and pretend to this complainant that he had shown and
84 pointed out to this complainant all cuts, openings, tunnels, drifts, shafts, winzes, and work of every kind and nature which had ever been made in said mine or mining claim, and that he had fully and truly disclosed and described to this complainant all that he had discovered and knew concerning the extent of the work and the ore in said mine.

IX.

That said mining claim, as could be seen on the surface in the excavation and openings therein and from what was visible in and about said mining claim, appeared to be well worth said sum of $10,000.00, and there appeared to be about 2,000 tons of ore in sight, and the ore bodies and strata seemed to be continuous, as represented by said defendant.

X.

That this complainant believed all of said representations so made by the said defendant to be true and relied upon them, and that,

believing in and relying upon said representations, it was
85 thereby induced to purchase and did purchase, on the faith of said representations, said mining claim from said defendant for the sum of $10,000.00, in the manner following, to wit: This complainant, on the 15th day of February, 1884, drew its check on the Bank of California in favor of said defendant for the sum of $10,000.00, which said check was in the words and figures following, to wit:

"No. 50. VIRGINIA, NEV., *February 15th*, 1884.

"Agency of the Bank of California pay to Frank Silva or order ten thousand dollars.

"$10,000.00. SOUTHERN DEV. CO. OF NEVADA,
"By H. M. YERINGTON.
"G. F. FORD, *Secretary.*"

And delivered the same to said defendant; that this complainant, through its president and duly authorized agent, H. M. Yerington, accompanied the said defendant to Wells, Fargo & Company's bank at Carson City, in the State of Nevada, and then and there introduced the said defendant to E. F. Pierce, the agent then and there of said bank, whereupon the said defendant endorsed and delivered the said check to said Wells, Fargo and Company's
86 bank, and the said complainant, through its said president, H. M. Yerington, caused the said bank then and there to pay to said defendant the sum of $2,500.00 in gold coin, and to issue to said defendant a certificate of deposit for $7,500.00, in the words and figures following, to wit:

"*Certificate of Deposit.*

"No. 24425.

"[Wells, Fargo & Co., United States. Capital, 6,250,000 dollars.]

"WELLS, FARGO & CO.,
"CARSON CITY, NEV., *Feb'y 15th*, 1884.

"Frank Silva has deposited with us seventy-five hundred dollars, payable to the order of himself on return of this certificate, properly endorsed.

"$7,500. (Signed) E. F. PIERCE, *Ag't.*"

That the said Bank of California afterwards, to wit, on or about February 18th, 1884, duly honored and paid the amount of money mentioned in said check, to wit, the sum of ten thousand dollars, to said Wells, Fargo & Company; that the said defendant had not at the time of the delivery of said check to or by him, or at the time of
87 the delivery of said $2,500.00 to him, or at the time of the delivery of the said certificate of deposit to him any money on deposit with the said Wells, Fargo & Company; that the said defendant at the time of receiving said check from this complainant

delivered to this complainant a deed of conveyance of the mining claim above mentioned for and in consideration of said sum of $10,000.00, and also at the same time and by the same deed of conveyance conveyed to this complainant certain other property in said New Coso mining district, county of Inyo, State of California, and described as follows: Commencing at the southeasterly boundary of the said Sterling mine, and running thence in a southeasterly direction 1,500 feet in length, and being 600 feet in width, commonly known and designated as the Vasco mine, and also that spring of water situate in said district, about 10 miles south from the town of Darwin, at the foot of the Maturango Mountain, in the Argus range of mountains, and known as the Sterling Springs; and also
88 that certain other spring of water situate at the foot of said Maturango Mountain, formerly known as the Harbin Springs, but now known as the Sterling Spring; and that afterwards, to wit, on the 8th day of March, 1884, the said defendant, by deed of conveyance, conveyed to this complainant certain other property described in said deed as follows, to wit: All that certain vein, lode, or ledge of mineral-bearing rock situate in the New Coso mining district, Inyo county, State of California, about 18 miles southwestwardly from the town of Darwin, on the west slope of the Argus range of mountains, being 1,500 feet in length northwesterly and southeasterly and 600 feet in width, and adjoining the Sterling mine on the east and parallel with the same, and known as the Sterling mine No. 2.

XI.

That the said defendant voluntarily offered to convey and did convey all of the above-described property except the said
89 Sterling mine without any consideration whatever, representing to complainant that it might at some future time be of some value, and thereby induced this complainant to accept a conveyance of the same; that the said last-described property was and is of no value whatever, which fact the said defendant at all he times herein mentioned well knew.

XII.

That, in truth and in fact, and as the said defendant at all the times herein mentioned well knew, the said Sterling mine was of no value whatever, and there was not in sight nor in fact in said mine 2,000 tons of valuable ore; that there were not more than 100 tons of ore in said mine; that said ore did not exceed the sum of $25 per ton in value; that the said ore bodies exposed in said mine were not solid or continuous in length or depth, as the said defendant at all the times herein mentioned well knew; that work had been done in and upon said mine to show and which did show
90 and discover to said defendant that ore bodies and strata did not continue in length or depth, but that they terminated within a few inches of said openings, which work was by the said defendant hidden and concealed from view—not made known to the complainant, but was kept secret from it by him, the said defendant.

XIII.

That the bottom of the so-called ore chamber in said Sterling mine was not composed of ore of any kind, but was composed of limestone, the country rock, as the said defendant well knew, as he had extracted all of the ore, had sunk down some distance into the said lime rock, and demonstrated the fact that the said ledge, lode, or vein had terminated and did not continue downwards; after which the said defendant covered the bottom of said chamber with ore, vein rock, and matter as above described.

That, in truth and in fact, and as the said defendant well knew, the vein or ore extended laterally from the walls of said cham-
91 ber but a few inches, he having drilled holes through the ore and into the country rock and there discovered the extent of said ore, which drill holes said defendant filled up and concealed from view and kept secret from this complainant.

That said defendant, by drills, drill holes, and other means, had discovered and knew that there was not more than one hundred tons of ore cut or opened in said mining claim.

XIV.

That said vein of ore cut and exposed in the open cut near the point of location of said mining claim, and which is above referred to, did not continue in length or depth, as the defendant well knew, as a shaft had been sunk down by him upon said vein from the level of the floor of said open cut to where the said vein terminated, to wit, about six feet from the floor of said cross-cut, which shaft was afterwards filled up by him, and all evidences of its existence concealed and kept secret from said complainant. The said
92 defendant well knew that he had not shown or pointed out to complainant all of the works and openings in and upon said mining claim or fully or truly disclosed what he had discovered and knew concerning the extent of the work and the ore in said mining claim, but, on the contrary, carefully concealed the drill holes above mentioned or the existence thereof, and the facts ascertained through them, and the fact that the bottom of the so-called ore chamber was composed of lime, and the fact that a shaft had been sunk from the level of the open cut near the point of location, which showed that the ore vein exposed in said cut did not continue downwards or lengthwise from said open cut.

That the falsity of the said representations so made as aforesaid by defendant *were* not discovered or ascertained by the said complainant or know- to it until on or about the first day of May, 1884, when the fact was discovered by work in the regular course
93 of mining in and upon said mining claim.

XV.

That immediately on the discovery of the falsity of the representations above stated and before the commencement of this action the

said complainant made and executed and tendered to the said defendant a good and sufficient deed of conveyance of all the property conveyed by him to the said complainant, and then and there demanded of the said defendant a rescission of the said contract of purchase and sale on the ground that this complainant was induced to enter into said contract and to make said purchase by the false representations above set forth and the fraud of the said defendant, and then and there demanded of the said defendant the delivery of said certificate of deposit to it on the ground that the possession of the same was obtained by the false representations and fraud above set forth, and that the same was the property and belonged
94 to this complainant, and further demanded of said defendant the sum of $2,500.00 paid to him in gold coin by it in Carson City on the ground that the same was obtained by fraud and false representations above mentioned; that the said defendant, although then in the possession of the said certificate of deposit and not having transferred or assigned the same, then and there refused and has ever since refused to rescind said contract or to restore to complainant any of the money or the certificate of deposit received by him from said complainant on said sale.

XVI.

That this complainant has executed in due form of law a good and sufficient deed of conveyance conveying to said defendant all the property ever conveyed by him to it, which said deed your orator now brings into court and deposits the same for the use of defendant and to be delivered to him when he shall see fit to accept the same or whenever the court shall so adjudge.

95 Wherefore complainant prays that said contract of sale and purchase in this bill set forth be rescinded, and that the said defendant be adjudged and decreed to restore to complainant all that he received under said contract, and that said deed of conveyance, or such other deed of conveyance as the court may adjudge and decree, may be thereupon delivered to him, and for such other and further relief as to this court may seem just and equitable and as the nature of the case may require.

P. REDDY,
Solicitor for Complainant.

Agreed that the above is a true copy of the second amended bill filed in above-entitled suit.

P. REDDY,
For Complainant.
LANGHORNE & MILLER,
For Respondent.

96 STATE OF NEVADA, } ss:
County of Ormsby, }

H. M. Yerington, being sworn, says that he is an officer, to wit, the president of complainant in the above-entitled action; that he

has read the foregoing 2nd amended bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

H. M. YERINGTON.

Subscribed and sworn to before me this 18th day of June, 1885.

[SEAL.] T. J. EDWARDS,

Clerk & Com. U. S. Cir. Court, 9th Cir. & Dist. Nevada.

97 In the Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

THE SOUTHERN DEVELOPMENT CO. OF NEVADA, Complainant,

vs.

FRANK SILVA, Defendant.

Exceptions for scandal and impertinence taken by Frank Silva, the above-named defendant, to the second amended bill of complaint of The Southern Development Company of Nevada, complainant above named.

First exception.

For that the following portion of said 2nd amended bill, to wit, from and including the word "he," on line 14, page 2, down to and including the word "Territories," on line 14, page 2, is scandalous and impertinent.

Second exception.

98 For that the following portion of said bill, to wit, commencing at the word "in," on line 29, page 4, to and including the word "Company," on line 2, page 6, is scandalous and impertinent.

Third exception.

For that the following portion of said bill, to wit, commencing at the word "that," on line 2, page 6, to and including the word "Company," on line 6, page 6, is scandalous and impertinent.

Fourth exception.

For that the following portion of said bill, to wit, from the words "and also," on line 10, page 6, to and including the word "springs," on line 23, of page 6, is scandalous and impertinent.

Fifth exception.

For that the following portion of said bill, to wit, from the words "and that," on line 23 of page 6, to and including the words and figures "No. 2," on line 1, page 7, is scandalous and impertinent.

Sixth exception.

For that the following portion of said bill, to wit, all of
99 paragraph XI, on page 7, is scandalous and impertinent.

Seventh exception.

For that all the following portion of said bill, to wit, from the words "when the," on line 8, on page 9, to and including the word "claim," on line 9, page 9, is scandalous and impertinent.

In all which particulars this exceptant excepts the said bill as scandalous and impertinent, and humbly insists that the said scandalous and impertinent matter ought to be expunged.

LANGHORNE AND MILLER,
R. S. MINER,
Sol's for Def't.
J. H. MILLER, *Of Counsel.*

Agreed that the foregoing is a true copy of the exceptions to the 2d amended bill filed herein.

P. REDDY,
For Complainant.
LANGHORNE & MILLER,
For Respondent.

100 In the Circuit Court of the United States, Ninth Circuit, District of California.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs* FRANK SILVA, Defendant. } No. 3431.

On reading and filing defendant's exceptions to the 2nd amended bill of complaint herein, and on other good cause shown, it is ordered that said bill of complaint and said exceptions thereto be, and the same are hereby, referred to S. C. Houghton, Esq., master in chancery, to examine and proceed thereon within the time and according to the manner provided by law and the rules of this court.

July 21, 1885.

(Signed) SAWYER,
Circuit Judge.

(Endorsed:) Service of copy of within order is hereby ad-
101 mitted this 21st day of July, 1885. P. Reddy, sol. for pl'ff. Filed July 21, 1885. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing to be a full, true, and correct copy of an order of reference to S. C.

Hougton, master in chancery, &c., filed July 21, 1885, in the cause entitled Southern Development Company of Nevada *vs.* Frank Silva, No. 3431.

Attest my hand and seal of said circuit court this 27th day of August, A. D. 1885.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON,
Deputy Clerk.

(Endorsed:) Filed August 28, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

102 *Def't's Exception to Master's Report.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Defendant. } No. 3431.

Exceptions of Frank Silva, defendant in the above-entitled action, to the report of the master in chancery in the matter of the exceptions for scandal and impertinence heretofore taken by said Silva to the second amended bill of complaint of complainant.

Now comes Frank Silva, defendant in the above-entitled action, and excepts to the report of S. C. Hougton, Esq., master in chancery, heretofore, on August 28th, 1885, filed by him in the matter of the exceptions theretofore taken by said Silva to the second amended bill of complaint of complainant for scandal and impertinence, and by which said report all of the exceptions of said Silva to said bill were overruled and denied; and, as grounds of exception to said report, this defendant specifies the following, viz:

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1. For that the said master in chancery erred in overruling the first exception taken by defendant to said bill and deciding that the matter so excepted is not scandalous or impertenent and ought to be expunged.

2. For that said master in chancery erred in overruling the second exception taken by defendant to said bill and deciding that the matter so excepted is not scandalous or impertinent, whereas said matter so excepted to is scandalous and is also impertinent and ought to be expunged.

3. For that the said master in chancery erred in overruling the third exception taken by defendant to said bill and deciding the matter so excepted to is not scandalous or impertinent, whereas the said matter so excepted to is scandalous and is impertinent and ought to be expunged.

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4. For that the master in chancery erred in overruling defendant's fourth exception to said bill and deciding that the matter so excepted

to is not scandalous or impertinent, whereas the matter so excepted to is scandalous and is impertinent and ought to be expunged,

5. For that said master in chancery erred in overruling defendant's fifth exception to said bill and deciding that the matter so excepted to is not scandalous or impertinent, whereas said matter so excepted to is scandalous and is impertinent and ought to be expunged.

6. For that the said master in chancery erred in overruling defendant's sixth exception to said bill and deciding that the matter so excepted to is not scandalous or impertinent, whereas said
105 matter is scandalous and impertinent and should be expunged.

7. For that the rules of law laid down in said report by virtue of which defendant's exceptions were overruled are not correct or good law.

8. For that said rules of law have no application to the matters in hand.

Wherefore, and for divers other good and sufficient exceptions appearing on the face of said report, this exceptant prays this honorable court that the said report be not confirmed, and that the same be set aside and disallowed, and that the said exceptions to said bill be allowed, and for such other relief as may be proper.

LANGHORNE & MILLER,
Sol's for Def'nd't.
J. H. MILLER, *Of Counsel.*

Ordered, That the hearing of the foregoing exceptions be set down for hearing before the court on Monday, September 7, 1885.

——— ———,
Circuit Judge.

106 (Endorsed:) Service of the within exceptions is hereby admitted this 4th day of Sept., 1885. P. Reddy, attorney for complainant. Filed Sept. 5, 1885. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

At a stated term, to wit, the November, A. D. 1885, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 18th day of January, in the year of our Lord one thousand eight hundred eighty-six.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Hon. Geo. M. Sabin, N. D., dis't judge of Nevada.

Order Overruling Exceptions.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA
vs.
FRANK SILVA. } No. 3431.

By consent of the respective counsel herein it is ordered that the exceptions to the master's report herein be, and the same hereby are, overruled.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 8th day of August, A. D. 1887.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON,
Deputy Clerk.

107 *Answer of Defendant to 2nd Am'd Bill of Complaint.*

In the United States Circuit Court, Ninth Circuit, District of California.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,

vs.

FRANK SILVA, Respondent.

Answer of Frank Silva, the above-named respondent, to the second amended bill of complaint of The Southern Development Company of Nevada, the above-named complainant.

The above-named respondent, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be taken to the many errors and imperfections in the complainant's said bill contained, for answer thereto, or unto so much thereof as he is advised it is material or necessary to make answer unto, this respondent, answering, saith that he has no information or belief sufficient to enable him to answer the
108 allegations of paragraph I of said bill of complaint, or whether the complainant ever was or is now a corporation duly created and existing under the laws of the State of Nevada, and hence respondent leaves complainant to make such proof in that regard as he may be advised.

Further answering, respondent denies that on the 15th of February, 1884, or at any time, he offered to sell to complainant for the sum of $10,000 or any sum that certain mining claim situate, lying, and being in New Coso mining district, county of Inyo, State of California, commonly known and designated as the Sterling mine.

Denies that, in order to induce complainant to purchase said or any mining claim, or to pay $10,000 or any sum therefor, or for any purpose or at all, respondent, with intent to deceive or defraud com-

plainant, or at all, did, knowingly or designedly or fraudulently or at all, represent to complainant that said mining claim was of great or any value or of the value of $10,000 or any sum whatever,
109 or that there was in said mine 2,000 tons or any number of tons of ore or valuable ore in sight, or that he used the terms "ore in sight" in the ordinary or any sense whatever, or that the ore exposed in the openings, cuts, drifts, shafts, and winzes, or any of them, in and upon said mining claim were continuous bodies of ore in length or depth, or that no work had been done in or about or upon said mining claim, or that no such work had been done to show or which did show that said ore did not continue in length and depth or in length or depth.

Denies that the bottom of the so-called ore chamber mentioned in paragraph V of said bill of complaint was covered with loose ore or rock or vein or other matter to such a depth that the character of the rock or matter composing the bottom of said chamber could not be seen or determined or was unknown to complainant.

Denies that respondent did then or there or at any time or
110 place, with intent to deceive or defraud plaintiff, or at all, knowingly or designedly or falsely or fraudulently or at all, represent or pretend to plaintiff that the bottom of said chamber was composed of ore of the same kind or value as the ore on the sides of said chamber, or that the vein or lode or ore continued downward from said chamber or the bottom of said chamber, apparently or otherwise increasing in width, or that the thickness of the ore on the sides of said chamber had not been explored, or that its thickness was unknown, or that there was at least 500 or any tons of ore or valuable ore exposed by the excavation aforesaid or otherwise or at all or in mining parlance 500 or any tons of ore or valuable ore in sight in that or any place.

Denies that defendant then or there or at any time did knowingly or designedly or falsely or fraudulently or at all represent or pretend to plaintiff or any one that no work had been done in or upon or about said vein or ore vein or otherwise to show or which did
111 show that said ore vein did not continue downward or lengthwise from said cut or at all; denies that this defendant did represent or pretend or did falsely or fraudulently represent or pretend to plaintiff or any one that he had shown or pointed out to plaintiff or any one all the cuts, openings, tunnels, drifts, shafts, winzes, or work of every or any kind or nature which had ever been made in said mining claim or mine, or that he had fully or truly or at all disclosed or described to plaintiff or any one all that he had discovered or knew concerning the extent of the work or the ore in said mine.

Defendant denies that plaintiff believed all or any of said alleged or any representations claimed to have been made by defendant to be true or relied upon them or any of them, or that, believing in or relying upon said or any representations, said plaintiff was thereby induced to purchase or did purchase on the faith of said representations said mining claim from defendant for $10,000.00 or
112 any sum at all, in the manner described in the bill of complaint or otherwise or at all.

Defendant denies that at the time of receiving the check from plaintiff or at any time he delivered to plaintiff a deed of conveyance of said Sterling mine in consideration of $10,000, but avers that said $10,000 was paid for said Sterling mine, and also for certain other mines and certain springs of water and other property.

Defendant denies that he voluntarily offered to or did convey all of the other property referred to except said Sterling mine without any consideration, or represented to plaintiff that at some future day it might be of value, or thereby induced plaintiff to accept a conveyance thereof, or that said property was of no value, or that defendant well knew the same at any time whatever.

Denies that in truth or in fact, at all or any of the times mentioned in the bill of complaint, said Sterling mine was of no
113 value, or that there was not in sight or in fact or in said mine 2,000 tons of ore or valuable ore, or that there were not more than 100 tons of ore in said mine, or that said ore did not exceed the sum of $25 in value per ton, or that the said ore bodies exposed in said mine were not solid or continuous in length, or that defendant knew or well knew the same; denies that work had been done in said mine to show or which did show or discover to defendant that the ore bodies or strata did not continue in length or depth, but terminated within a few inches of said openings, or that said work or any such alleged work was by the defendant hidden or concealed from view or not made known to plaintiff, or was kept secret from it by defendant.

Defendant denies that he knew or well knew that the bottom of said so-called ore chamber was not composed of ore of any kind, or was composed of limestone or country rock, or that he had
114 extracted all of the ore therefrom, or had sunk some distance into the lime rock, or demonstrated the fact that the said ledge, lode, or vein had terminated or did not continue downwards, or that thereafter or *at* ever or any time defendant covered the bottom of said chamber with ore, vein rock, or matter as alleged, or otherwise or at all.

Defendant denies that he knew or well knew that the vein or ore extended laterally from said chamber but a few inches, and as to whether or not such was the fact this defendant is not informed save by said bill of complaint, and as to those allegations he leaves complainant to make such proof as he may be able.

Denies that he drilled any holes or hole through the ore or into the country rock or otherwise, or thereby or at all discovered the extent of said ore, or that he filled up said or any drill holes, or concealed them from view or kept them secret from com-
115 plainant. Defendant denies that by drills or drill holes or other or any means or at all he had discovered or knew that there was not more than 100 tons or ore cut or appeared in said mining claim.

Defendant denies that he knew or well knew that said vein of ore cut and exposed in the open cut near the point of location of said mining claim did not continue in length or depth, or that a shaft had been sunk down by him upon said vein from the level of

the floor of said open cut to where said vein terminated, or any other place, which was afterwards or at any time filled up by him, or all evidence of its existence, or kept secret from complainant.

Defendant denies that he knew or well knew that he had not shown or pointed out to plaintiff all of the works and openings in and upon said mining claim, or fully or truly disclosed what he had discovered or knew concerning the extent of the work or the ore in said mining claim.

116 Denies that he concealed or carefully concealed the drill holes referred to or any drill holes or the existence thereof or the facts ascertained through them or the fact that the bottom of the so-called ore chamber was composed of lime, or the fact that a shaft had been sunk from the level of the open cut near the point of location or anywhere, or that the same showed that the ore vein exposed in said cut did not continue downwards or lengthwise from said open cut.

Denies that the falsity of any representations made by defendant were not discovered or ascertained by plaintiff or known to it until about May 1st, 1884, or any time, or that such alleged fact was discovered by work in the regular or other course of mining on said mining claim.

Defendant denies that because of said alleged false and fraudulent representations or of any representations whatever on the part
117 of defendant plaintiff has been damaged in the sum of $10,000 or any sum whatever.

Defendant has no information or belief on the subject sufficient to enable him to deny, nor is he informed, save by said bill of complaint, whether the plaintiff laid out or expended in or about the mining of the ores of said mind, or in or about preparing for transportation or reduction thereof, or in or about the necessary or permanent improvements upon said mine, a large or any sum of money, or $5,000 or any part thereof, or whether plaintiff was induced so to do by reason of any representations of defendant, or at all. This defendant leaves the complainant to make such proof of said allegations as it may be able. And this defendant, further answering, denies all and all manner of unlawful combination and confereracy and unlawful acts, fraud, and wrong-doing wherewith he is charged by said bill of complaint, without this, that there
118 is any other matter, cause, or thing in the said bill of complaint contained, or material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true, to the knowledge or belief of the defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his costs and charges in this behalf most wrongfully incurred.

LANGHORNE & MILLER,
Sol's for Def't.
J. H. MILLER, *Of Counsel.*

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Frank Silva, being duly sworn, deposes and says that he is the defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is
119 true of his own knowledge, except as to those matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

FRANK SILVA.

Subscribed and sworn to before me this ninth day of February, 1886.

[SEAL.] W. L. HUNTER,
County Clerk, Inyo Co.

(Endorsed:) Service of the within answer is hereby admitted this 15 day of Febr'y, 1886. P. Reddy, attorney for pl'ff. Filed Feb'y 16, 1886. L. S. B. Sawyer, clerk.

120 *Replication to Answer.*

In the Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,
vs.
FRANK SILVA, Defendant.

The replication of The Southern Development Company of Nevada, the above-named complainant, to the answer of Frank Silva, defendant.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had and taken to the manifold insufficiencies of the said answer, for replication thereto, says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant, without this, than any other matter or thing whatso-
121 ever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matter and things the repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

P. REDDY,
Solicitor for Complainant.

(Endorsed:) Service of the within replication is hereby admitted by copy this 20th day of February, 1886. Langhorne & Miller, solicitors for defendant. Filed February 20, 1886. L. S. B. Sawyer, clerk, by F. D. Monckton, dep'y cl'k.

122 *Enrollment.*

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Respondent. } No. 3431.

On the 4th day of August, 1884, a certified copy of the record herein on transfer from the superior court of the county of Inyo, State of California, was filed herein, which certified copy of record is hereto annexed.

On the 12th day of January, 1885, an order submitting and overruling demurrer was made and entered herein, a certified copy of which order is hereto annexed.

On the 9th day of March, 1885, an order setting aside and vacating said order overruling, &c., demurrer was made and entered herein, a certified copy of which order is hereto annexed.

On the 2d day of April, 1885, an amended bill of complaint was filed herein, which is hereto annexed. A demurrer to said
123 amended bill of complaint was filed herein on the 23d day of May, 1885, and is hereto annexed.

On the 10th day of June, 1885, an order confessing said demurrer to said amended bill of complaint was made and entered herein, a certified copy of which order is hereto annexed.

On the 22d day of June, 1885, a second amended bill of complaint was filed herein and is hereto annexed. Exceptions of respondent to said second amended bill of complaint were filed herein on the 21st day of July, 1885, and are hereto annexed. An order referring said exceptions to S. C. Houghton, Esq., master, &c., was filed herein on the 21st day of July, 1885, and is hereto annexed.

On the 28 day of August, 1885, said master filed his report herein, which is hereto annexed.

Respondent's exceptions to said master's report were filed and entered herein on the 5 day of September, 1885, and are hereto annexed.

On the 18 day of January, 1886, an order overruling said exceptions to said master's report was made and entered
124 herein, a certified copy of which order is hereto annexed.

An answer was filed herein on the 16th day of February, 1886, which is hereto annexed.

A replication to said answer was filed herein on the 20th day of February, 1886, and is hereto annexed.

Thereafter a final decree was filed and entered herein in the words and figures following, to wit:

At a stated term, to wit, the February term, 1887, of the circuit court of the United States in and for the ninth circuit, northern district of California, held at the court-room thereof, in the city and

county of San Francisco, State of California, on the 14th day of March, A. D. 1887.

Present: Hon. Lorenzo Sawyer, circuit judge.

Decree.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Respondent. } No. 3431.

125 This cause having heretofore come on regularly for final hearing on the pleadings and proofs, and the same having been argued by counsel for the respective parties and submitted to the court for decision, and the court having duly considered the same and being now fully advised in the premises, it is declared and adjudged by the court that the complainant has not in and by the proofs adduced shown itself entitled to any relief whatever against respondent, but it is shown that respondent is entitled to have complainant's bill dismissed and judgment entered for his costs.

Wherefore, by reason of the premises, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree that the complainant take nothing herein, but that its bill of complaint be, and the same is hereby, dismissed.

And it is further ordered, adjudged, and decreed that said complainant, The Southern Development Company of Nevada, a
126 corporation, do pay to Frank Silva, the respondent herein, the costs and disbursements of said respondent, heretofore taxed, and amounting to the sum of $825.

August 8, 1887.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed and entered August 8th, 1887. L. S. B. Sawyer, clerk.

127 *Memorandum of Costs and Disbursements on Part of Respondent.*

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,
vs.
FRANK SILVA, Respondent.

General obj'n to whole bill not filed in time sustained. If I am overruled, then overruled. L. S.

Clerk's fees, filing answer	10 00
" " certified copy order for examination of mine	1 00
" " accrued and accruing costs	50 75
Fees of master in chancery on exceptions to bill of complaint	20 00*

* Disallowed.

These respondent's costs—see eq. R. 26—allowed. L. S.

Cash paid printing brief of def't	67 20*	
Not proper charge; might as well charge for atty's printing brief. L. S. Disallowed.		
Attorneys' docket fee	20 00	
Affidavit to answer	50	
Affidavit to two demurrers	1 00	
Fees for special examiner for expenses in taking testimony, as follows:		
R. R. fare from Carson to Independence	23 75*	
R. R. " Independence to Carson	23 75†	
14½ days' attendance, @ $10	145 00	
Expenses of examiner on road	10 00*	
Expressage on model	5 75	
128 Board and lodging of examiner at Independence	17 00*	
Cash paid for copy of testimony	30 00*	
Cash p'd for taking test. of def't, 2,140 fols., @ 20 cts.	428 00	
		$853 70
Amount brought forward		$853 70

Attorneys' and solicitors' fees allowed by law for examining and cross-examining 27 witnesses and taking 27 depositions, which were admitted in evidence in the case, @ 2.50 each, viz:

L. F. Wrinkle, one deposition	$2 50
H. M. Yerington, " "	2 50
Chas. Forman, " "	2 50
H. W. Forman, " "	2 50
George Bryson, " "	2 50
W. V. Price, " "	2 50
Jno. S. Gorham, " "	2 50
E. P. Pierce, " "	2 50
Jno. Alexander, " "	2 50
Isaac Harris, " "	2 50
O. I. Mairs, " "	2 50
Daniel Crough, " "	2 50
Chas. Anthony, " "	2 50
J. C. Irwin, " "	2 50
J. S. McGee, " "	2 50
R. L. Peeler, " "	2 50
G. H. Hardy, " "	2 50
E. H. Edwards, one deposition	2 50
129 Thomas Boland, " "	2 50
J. C. Eddy, " "	2 50
Frank Fitzgerald, one deposition	2 50

* Disallowed. † B. S. J. Allowed.

Frank Silva,	one deposition	2 50	
Richard Creer,	" "	2 50	
Frank Bartlett,	" "	2 50	
Fred. Corkhill,	" "	2 50	
			67 50
Jas. A. McKenzie & Geo. H. Hardy, 2 dep's		5 00	
Amount forward			$921 20
Amount bro't forward			$921 20

Witness fees, as follows:

Jno. Alexander, per diem, 2 days, @ 1.50		3 00	
Isaac Harris,	" " 1 " "	1 50	
O. J. Mairs,	" " 1 " "	1 50	
Daniel Crough,	" " 1 " "	1 50	
J. C. Irwin,	" " 2 " "	3 00	
J. S. McGee,	" " 1 " "	1 50	
R. L. Peeler,	" " 1 " "	1 50	
G. H. Hardy,	" " 1 " "	1 50	
Chas. Anthony,	" " 5 " "	7 50	
E. H. Edwards,	" " 6 " "	9 00	
Thos. Boland,	" " 7 " "	10 50	
J. C. Eddy,	" " 7 " "	10 50	
Frank Fitzerald,	" " 8 " "	12 00	
			64 50*

Mileage of witnesses, as follows:

Chas. Anthony, Darwin to Independence and return, 110 miles, at 5 cts.	5 50	
E. H. Edwards, Lone Pine to Independence and return, 32 miles, at 5 cts.	1 60	
130 Thos. Boland, Keeler to Independence and return, 62 miles, @ 5 cts.	3 10	
J. C. Eddy, to Independence and return, 110 miles, @ 5 cts.	5 50	
		15 70*

Disallowances	$1,002 40
Allowed by judge	271 70

20 00
67 00
23 75
23 75
10 00
17 00
30 00
64 50
15 70

271 70

Taxed at $730 70.

L. S. B. SAWYER, *Clerk.*

Retaxed at $8.25.

L. S. B. SAWYER, *Clerk.*

* Disallowed.

UNITED STATES OF AMERICA.

NORTHERN DISTRICT OF CALIFORNIA, } ss:
City and County of San Francisco, }

J. H. Miller, being duly sworn, deposes and says that he is one of the attorneys for the respondent in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than the said respondent; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

J. H. MILLER.

131 Subscribed and sworn to before me this 19th day of March, A. D. 1887.

L. S. B. SAWYER,
Commissioner of U. S. Circuit Court, District of California.

To P. Reddy, Esq., solicitor for complainant:

You will please take notice that on Tuesday, the 22nd day of March, A. D. 1887, at the hour of 10 o'clock a. m., we will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court in such case made and provided.

LANGHORNE & MILLER,
Attorneys for Respondent.

(Endorsed:) Service of within memorandum of costs and disbursements and receipt of copy thereof acknowledged this 19th day of March, A. D. 1887. P. Reddy, attorney for complainant. Mar. 22, '87. Counsel went before Judge Sawyer. Con. to Sat., Mar. 26.
132 Counsel present sub'd on p'ts. Filed this 21st day of March, A. D. 1887. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

Clerk's Certificate to Enrolled Papers.

Whereupon said certified copy of record, pleadings, certified copies of orders, order, exceptions, master's report, final decree, and a memorandum of taxed costs are hereto annexed, said final decree being duly signed, filed, and enrolled pursuant to the practise of said circuit court.

Attest, &c.:
[SEAL.]

L. S. B. SAWYER, *Clerk,*
By F. D. MONCKTON,
Deputy Clerk.

(Endorsed:) Enrolled papers. Filed August 8th, 1887. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

133 *Notice of Substitution of Attorney.*

In the United States Circuit Court, Ninth Judicial District, for the District of California.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Plaintiff,

vs.

FRANK SILVA, Defendant.

To Messrs. Reddy and Conklin and John W. P. Laird, Esq., attorneys for plaintiff:

You are hereby notified that Richard S. Miner, Esq., an attorney-at-law, residing at Bridgeport, Mono county, California, is hereby substituted as attorney for the defendant in the above-entitled action in my name, place, and stead.

GEO. M. GILL,
Attorney of Record for Defendant.

I hereby accept the above substitution.

RICH'D S. MINER,
Att'y for Def't.

134 (Endorsed:) Service of the within notice is hereby accepted this 16th day of September, 1884. Reddy & Conklin and John W. P. Laird, att'ys for pl'ff. Filed Oct. 11, 1884. L. S. B. Sawyer, clerk.

135 *Deed.*

This indenture, made the thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-five, between the Southern Development Company of Nevada, a corporation formed and existing under the laws of the State of Nevada, party of the first part, and Frank Silva, of Inyo county, State of California, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten thousand dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to *his* heirs and assigns that certain mining claim situate in the New Coso mining district, in the county of Inyo, State of California, and described as follows, to wit:

All that certain vein, lode, — ledge of mineral-bearing rock
136 situate about ten miles southwardly from the town of Darwin, on the west slope of the Argus range of mountains, being fifteen hundred feet in length northwesterly and southeasterly and six hundred feet in width, and known as the Sterling mine, located on the sixth day of December, 1874, by W. B. Herbin, A. W. Ster-

ling, and Henry Dunlap, notice of which location was duly recorded in the office of the mining recorder of said district December 9th, 1874, in Book A, page 97, of said records; also that certain other vein, lodge, or ledge of mineral-bearing rock situate on the west side of the Argus range of mountains adjoining the Sterling mine on the south and described as follows:

Commencing at the south or southeasterly boundary of the Sterling mine and running thence in a southeasterly direction fifteen hundred feet in length and six hundred feet in width, and being about ten miles in a southeasterly direction from the town of
137 Darwin, known as the Vasco mine, and located May 24th, 1883, by Frank Silva, notice of which location was duly recorded in the office of the mining recorder on the twentieth day of June, 1883, in Book D, page 249, of said records; also all that certain spring of water located by Frank Silva August 24, 1882, situate about two miles northerly from the Preciado spring and about ten miles southerly from the town of Darwin, at the foot of the Maturango Mountain, in the Argus range of mountains, and known as the Sterling springs, the notice of location of which was duly recorded in the office of the mining recorder of said district on the 9th day of September, 1882, in Book D, page 221, of said records; also all that certain other spring of water, with five acres of land adjacent, about twelve miles southeast of the town of Darwin, at the foot of the Maturango Mountain, in the Argus range, formerly known as the Harbin springs and now
138 known as the Sterling springs, located on the 29th day of November, 1881, by Frank Silva, the notice of which location was duly recorded in the office of the mining recorder of said district November 29th, 1881, in Book D, page 184, of said records, both of the above-mentioned springs being and lying in the New Coso mining district, Inyo county, State of California; also all that certain vein or lode situate in the New Coso mining district, Inyo county, State of California, described as follows, to wit: All that certain vein, lode, or ledge of mineral-bearing rock situate about ten miles southwardly from the town of Darwin, on the west slope of the Argus range of mountains, being fifteen hundred feet in length northwesterly and southeasterly and six hundred feet in width, and adjoining the Sterling mine on the east, and parallel with the same, and known as the Sterling mine number two, located by Frank Silva on the 17th day of July, 1880, notice of which location was duly recorded in
139 the office of the mining recorder of said above mining district on the 19th day of July, 1880, page 129, Book D, of the records of said mining district, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first

part of, in, or to the said premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the said premises,
140 together with the appurtenance- and privileges thereto incident, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set its hand and seal the day and year first above written, by its president hereunto duly authorized.

THE SOUTHERN DEVELOPMENT
COMPANY OF NEVADA, [SEAL.]
By H. M. YERINGTON, *Its President.*

Signed, sealed, and delivered in the presence of—
G. F. FORD.

STATE OF NEVADA, }
County of Ormsby, } ss:

On this thirteenth day of April, A. D. 1885, personally appeared before me, Willis G. Clarke, a notary public in and for said county of Ormsby, H. M. Yerrington, the president of the Southern Development Company of Nevada, personally known to me to be the person described in and who executed the foregoing instrument, who, as president of said Southern Development Company of Nevada, acknowledged to me that he executed the same freely and vol-
141 untarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal.

Done at office, in Carson City, Nevada, the day and year in this certificate above written.

[SEAL.] WILLIS G. CLARKE,
Notary Public.

(Endorsed:) Filed July 13, 1885. L. S. B. Sawyer, clerk.

(Here follows diagram marked p. 142, Complainant's Exhibit No. 1.)

143 COMPLAINANT'S EXHIBIT 3.

Southern Development Co.

Certificate of Incorporation of the Southern Development Company of Nevada.

Know all men by these presents that we, the undersigned, have this day associated ourselves together for the purpose of incorporating, under the laws of the State of Nevada, a corporation to be known by the corporate name of the Southern Development Com-

pany of Nevada, and we hereby certify, set forth, and declare that the object- for which the corporation is formed are—

To buy and sell lands, town lots, and other real property; to build, maintain, and operate toll roads, and thereon to collect and receive tolls; to buy, locate, hold, and possess water and water rights and privileges, and to construct, lay down, and maintain reservoirs, flumes, ditches, pipes, acqueducts, and conduits for the collec-
144 tion and transportation of water; to supply and sell water to the inhabitants of towns, cities, and other places for domestic, mechanical, and other uses, and to build and operate flumes for the transportation therein, by means of water, of wood, lumber, and timber; to buy, sell, hold, own, and possess timber lands, and to build, own, and operate saw-mills and machinery, and to manufacture, trade in, and sell all kinds of wood, timber, and lumber; to engage in the building, construction, maintenance, and operation, upon contract and for others, of railroads, toll roads, flumes, ditches, saw-mills, machinery, and other improvements; to acquire and hold all such property, real and personal, as may be necessary for the proper carrying out of the objects aforesaid, and to engage in any such species of trade, business, or commerce, foreign or domestic, as may be found requisite or advantageous in and about the matters herein set forth and declared.

The amount of the capital stock of this company shall be
145 six hundred thousand dollars. The time of the existence of the company shall be fifty years.

The capital stock shall consist of six thousand shares of the par value of one hundred dollars each, lawful money of the United States. The number of trustees of this corporation shall be five, and the following are named trustees, who shall manage the concerns of the company for the first six months: H. M. Yerington, D. L. Bliss, D. A. Bender, W. D. Tobey, H. L. Tickner. The principal place of business of the company shall be located at Carson City, Ormsby county, State of Nevada.

In witness whereof we have hereunto set our hands and seals this sixth day of October, A. D. 1881.

H. M. YERINGTON. [SEAL.]
D. L. BLISS. [SEAL.]
D. A. BENDER. [SEAL.]
W. D. TOBEY. [SEAL.]
H. L. TICKNER, [SEAL.]
By D. A. BENDER,
His Attorney-in-Fact.

146 STATE OF NEVADA, } ss:
County of Ormsby, }

On the sixth day of October, A. D. one thousand eight hundred and eighty-one, personally appeared before me, Charles Martin, a notary public in and for the said county of Ormsby, in the State of Nevada, H. M. Yerington, D. L. Bliss, D. A. Bender, and W. D. Tobey, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons de-

scribed in and who executed the said annexed instrument as parties thereto, and who each duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

CHARLES MARTIN,
Notary Public.

147 STATE OF NEVADA, } ss:
County of Ormsby, }

On this 8th day of October, A. D. one thousand eight hundred and eighty-one, personally appeared before me, Charles Martin, a notary public in and for the said county of Ormsby, in the State of Nevada, D. A. Bender, personally known to me to be the same person described in and who executed, by power of attorney, the foregoing instrument as the attorney-in-fact of H. L. Tickner, named in the foregoing instrument as a party thereto and therein described as the party executing the same, by his said attorney, and the said D. A. Bender acknowledged to me that he executed the same freely and voluntarily as and for the act and deed of the said H. L. Tickner and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] CHARLES MARTIN,
148 *Notary Public, Ormsby County, Nevada.*

STATE OF NEVADA, } ss:
County of Ormsby, }

I, M. D. Hatch, county clerk and *ex officio* clerk of the district court of the second judicial district in and for said county and State, do hereby certify that the foregoing is a full and correct copy of the original certificate of incorporation as the same appears on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 8th day of Oct., A. D. 1881.

[SEAL.] M. D. HATCH, *Clerk.*

(Endorsed:) Certificate of incorporation of the Southern Development Company of Nevada. Dated October 6th, 1881. Filed in the office of secretary of state of Nevada, October 8th, A. D.
149 1881. Jasper Babcock, sec'y of state, by J. G. Chesley, deputy.

STATE OF NEVADA, } ss:
Department of State, }

I, John M. Donner, secretary of state of the State of Nevada, do hereby certify that the annexed is a true, full, and correct copy of the original articles of incorporation of the Southern Development Company as appears of record in book 2 of incorporation, pages 208, 209, 210, and 211, now on file and of record in this office.

In witness whereof I have hereunto set my hand and affixed the great seal of State.

Done at office, in Carson City, Nevada, this seventh (7) day of June, A. D. 1886.

[SEAL.] JOHN M. DONNER,
Secretary of State.

(Endorsed:) Complainant's Exhibit No. 3. Clement Bennett, examiner. Opened and refiled Aug. 9, 1886. L. S. B. Sawyer. clerk.

150 COMPLAINANT'S EXHIBIT 4.

Deed.

This indenture, made the fifteenth day of February, in the year of our Lord eighteen hundred and eighty-four, between Frank Silva, of the town of Darwin, Inyo county, California, party of the first part, and The Southern Development Company of Nevada, a corporation formed and existing under the laws of the State of Nevada, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten thousand dollars, lawful money of the United States of America, to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, and quitclaimed, and by these presents does grant, bargain, sell, remise, release, convey, and quitclaim, unto the said party of the second part and to its successors and assigns forever all the right, title, and interest, estate, claim, and demand, both in law and equity, as well in possession as in expectancy, of the said party of the first part of, in, or to that certain portion, claim, and min-
151 ing and water right, title, or property on certain veins or lodes of rock containing precious metals of gold, silver, and other minerals, and situated in the New Coso mining district, Inyo county, State of California, and described as follows, to wit: All that certain vein, lode, or ledge of mineral-bearing rock situate about ten (10) miles southwardly from the town of Darwin, on the west slope of the Argus range of mountains, being fifteen hundred (1,500) — in length northwesterly and southeasterly and six hundred (600) feet in width, and known as the Sterling mine, located on the sixth (6th) day of December, 1874, by W. B. Herbin, A. W. Sterling, and Henry Dunlap, notice of which location was duly recorded in the office of the mining recorder of said district, December 9th, 1874, in Book A, page 97, of said records; also that certain other vein, lode, or ledge of mineral-bearing rock situated on the west slope of the Argus range of mountains, adjoining the Sterling mine on the south, de-
152 scribed as follows: Commencing at the south or southeasterly boundary of the Sterling mine, and running thence in a southeasterly direction fifteen hundred (1,500) feet in length and six hundred (600) feet in width, and being about ten (10) miles in a southeasterly direction from the town of Darwin, known as the Vasco mine, and located May 24th, 1883, by Frank Silva, notice of

which location was duly recorded in the office of the mining recorder on the 20th day of June, 1883, in Book D, page 249, of said records; also all that certain spring of water located by Frank Silva Aug. 24, 1882, situate about two (2) miles northerly from the Preciado springs and about ten (10) miles southerly from the town of Darwin, at the foot of the Maturango Mountain, in the Argus range of mountains, and known as the Sterling springs, the notice of location of which was duly recorded in the office of the mining recorder of said district on the 9th day of September, 1882, in
153 Book D, page 221, of said records; also all that certain other spring of water, with five (5) acres of land adjacent, about (12) miles southeast of the town of Darwin, at the foot of Maturango Mountain, in the Argus range, formerly known as the Harbin springs and now known as the Sterling spring, located on the 29th day of November, 1881, by Frank Silva, the notice of which location was duly recorded in the office of the mining recorder of said district November 29th, 1881, in Book D, page 184, of said records, both of the above-mentioned springs being and lying in the New Coso mining district, Inyo county, State of California; together with all the dips, spurs, and angles and all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements and hereditaments or appurtenances thereto belonging, and the rents, issues, and profits thereof;
154 and also all the estate, right, title, interest, possession, claim, and demand whatsoever of the said party of the first part of, in, or to the premises and every part and parcel thereof:

To have and to hold all and singular the premises, with the appurtenances and privileges thereto incident, unto the said party of the second part.

And the party of the first part, for himself and his heirs, doth hereby agree to and with the party of the second part that he has full right and power to sell and convey the said premises, and that the said premises are now free and clear from incumbrances, sales, or mortgages made or suffered by the said party of the first part.

In witness whereof said party of the first part has hereunto set his hand and seal the day and year first above written.

FRANK SILVA. [SEAL.]

Sealed and delivered in the presence of—
G. F. FORD.

155 STATE OF NEVADA, } ss:
County of Ormsby, }

On this fifteenth day of February, A. D. one thousand eight hundred and eighty-four, before me, M. D. Hatch, county clerk and *ex officio* clerk of the district court in and for said county, personally appeared Frank Silva, personally known to me to be the individual described in and who executed the annexed instrument, and ac-

knowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said court, in this county, the day and year in this certificate first above written.

[SEAL.] M. D. HATCH, *Clerk.*

(Endorsed:) Deed. Frank Silva to the Southern Development Company of Nevada. Dated February 15th, 1884. Recorded,
156 at request of G. W. Jones, February 26, A. D. 1884, at 26 min. past 7 a. m., page 44. John Crough, county recorder. Plaintiff's Exhibit "B." Filed November 13, 1884. Thos. Crough, county clerk, by J. E. Parker, deputy. Complainant's Ex. 4. Clement Bennett, examiner. Opened and refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

157 COMPLAINANT'S EXHIBIT 5.

This indenture, made the eighth day of March, in the year of our Lord eighteen hundred and eighty-four, between Frank Silva, of the town of Darwin, Inyo county, California, party of the first party, and the Southern Development Company of Nevada, a corporation formed and existing under the laws of the State of Nevada, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollars, lawful money of the United States of America, to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, and quitclaimed, and by these presents does grant, bargain, sell, remise, release, convey, and quitclaim, unto the said party of the second part and to its successors and assigns forever all the right, title, and interest, estate, claim, and demand, both in law and equity, as well in possession as expectancy, of the said party of the first part of, in, or to that
158 certain portion, claim, and mining right, title, or property on that certain vein or lode of rock containing precious metals of gold, silver, and other minerals, and situated in the New Coso mining district, Inyo county, State of California, and described as follows, to wit: All that certain vein, lode, or ledge of mineral-bearing rock situate about ten miles southwardly from the town of Darwin, on the west slope of the Argus range of mountains, being fifteen hundred (1,500) feet in length northwesterly and southeasterly and six hundred (600) feet in width, and adjoining the Sterling mine on the east and parallel with the same, and known as the Sterling mine No. 2, located by Frank Silva on the seventeenth day of July, 1880, notice of which location was duly recorded in the office of the mining recorder of said above — mining district on the nineteenth day of July, 1880, in Book D, page 129, of the records of said mining district, together with all the dips, spurs, and angles, and also all the
159 metals, ores, gold, and silver-bearing quartz, rock, and earth therein, and all the right, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements and hereditaments

or appurtenances thereto belonging, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, possession, claim, and demand whatsoever of the said party of the first part of, in, or to the premises and every part and parcel thereof:

To have and to hold all and singular the premises with the appurtenances and privileges thereto incident, unto the said party of the second part.

And the party of the first part, for himself and his heirs, doth hereby agree to and with the party of the second part that he has full right and power to sell and convey the said premises, and that the said premises are now free and clear from all incumbrances, sales, or mortgages made or suffered by the said party of the first part.

160 In witness whereof said party of the first part has hereunto set his hand and seal the day and year first above written.

FRANK SILVA. [SEAL.]

Sealed and delivered in the presence of—
JOHN B. WHITE.

STATE OF CALIFORNIA, } ss:
County of Inyo, }

On this eighth day of March, one thousand eight hundred and eighty-four, before me, John B. White, a notary public in and for the county of Inyo, personally appeared Frank Silva, personally known to me to be the same person described in — whose name is subscribed to the within instrument, and who acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOHN B. WHITE.
Notary Public.

161 (Endorsed:) Deed. Frank Silva to the Southern Development Company of Nevada. Dated March 8th, 1884. Recorded, at request of G. W. Jones, March 15th, A. D. 1884, at 55 min. past 11 a. m., Book O, pages 77, 78, & 79. John Crough, county recorder. The People *vs.* Frank Silva. Deed offered in evidence by plaintiff and marked Exhibit "E." Thomas Parker, justice of the peace. Filed Nov. 14, 1884. Thos. Crough, county clerk, by J. E. Parker, deputy. Complainant's Exhibit 5. Clement Bennett, examiner. Opened and refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

162 COMPLAINANT'S EXHIBIT 6.

This indenture, made the thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-five, between the Southern Development Company of Nevada, a corporation formed and existing under the laws of the State of Nevada, party of the first

part, and Frank Silva, of Inyo county, State of California, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten thousand dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns that certain mining claim situate in the New Coso mining district, in the county of Inyo, State of California, and described as
163 follows, to wit: All that certain vein, lode, ledge of mineral-bearing rock situate about ten miles southwardly from the town of Darwin, on the west slope of the Argus range of mountains, being fifteen hundred feet in length northwesterly and southeasterly and six hundred feet in width, and known as the Sterling mine, located on the sixth day of December, 1874, by W. B. Herbin, A. W. Sterling, and Henry Dunlap, notice of which location was duly recorded, in the office of the mining recorder of said district December 9th, 1874, in Book A, page 97, of said records; also that certain other vein, lode, or ledge of mineral-bearing rock situated on the west side of the Argus range of mountains, adjoining the Sterling mine on the south, and described as follows: Commencing on the south or southeasterly boundary of the Sterling mine and running thence in a southeasterly direction fifteen hundred feet
164 in length and six hundred feet in width and being about ten miles in a southeasterly direction from the town of Darwin, known as the Vasco mine, and located May 24th, 1883, by Frank Silva, notice of which location was duly recorded in the office of the mining recorder on the twentieth day of June, 1883, in Book D, page 249, of said records; also all that certain spring of water located by Frank Silva August 24th, 1882, situate about two miles northerly from the Preciado spring and about ten miles southerly from the town of Darwin, at the foot of the Maturango Mountain, in the Argus range of mountains, and known as the Sterling springs, the notice of location of which was duly recorded in the office of the mining recorder of said district on the 9th day of September, 1882, in Book D, page 221, of said records; also all that certain other spring of water, with five acres of land adjacent, about twelve miles southeast of the town of Darwin, at the
165 foot of the Maturango Mountain, in the Argus range, formerly known as the Harbin springs and now known as the Sterling springs, located on the 29th day of November, 1881, by Frank Silva, the notice of which location was duly recorded in the office of the mining recorder of said district November 29th, 1881, in Book D, page 184, of said records, both of the above-mentioned springs being and lying in the New Coso mining district, Inyo county, State of California; also all that certain vein or lode situate in the New Coso mining district, Inyo county, State of California, described as follows, to wit: All that certain vein, lode, or ledge of mineral-bearing rock situate about ten miles southwardly from the town of Darwin,

on the west slope of the Argus range of mountains, being fifteen hundred feet in length northwesterly and southeasterly and six hundred feet in width and adjoining the Sterling mine on the east and parallel with the same, and known as the Sterling mine number two,
166 located by Frank Silva on the 17th day of July, 1880, notice of which location was duly recorded in the office of the mining recorder of said above mining district on the 19th day of July, 1880, page 129, Book D, of the records of said mining district, together with all the dips, spurs, and angles, and also all the metals, ores, gold, and silver-bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertain-g, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, to-
167 gether with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs, and assigns, forever.

In witness whereof the said party of the first part has hereunto set its hand and seal the day and year first above written by its president, hereunto duly authorized.

THE SOUTHERN DEVELOPMENT
COMPANY OF NEVADA, [SEAL.]
By H. M. YERINGTON, *Its President.* [SEAL.]

Signed, sealed, and delivered in the presence of—
G. F. FORD.

STATE OF NEVADA, }
County of Ormsby, } *ss:*

On this thirteenth day of April, A. D. 1885, personally appeared before me, Willis G. Clarke, a notary public in and for said county of Ormsby, H. M. Yerington, the president of the Southern Development Company of Nevada, personally known to me to be the person described in and who executed the foregoing instrument,
168 who, as president of said Southern Development Company of Nevada, acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal. Done at office in Carson City, Nevada, the day and year in this certificate above written.

[Seal of Notary Public.]

WILLIS G. CLARKE,
Notary Public.

Endorsed: U. S. circuit court, Cal. No. 3431. South'n De'l'p't Co. of Nevada *vs.* Frank Silva. Deed. The Sou. Dev't Co. of Nevada to Frank Silva. Dated April 13th, 1885. Filed July 13th, 1885. L. S. B. Sawyer, clerk.

169 I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing to be a full, true, and correct copy of a deed from the Southern Development Company of Nevada to Frank Silva filed in said circuit court in the cause entitled the Southern Development Company of Nevada *vs.* Frank Silva, No. 3431.

Attest my hand and seal of said circuit court this 2d day of June, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON,
Deputy Clerk.

(Endorsed:) Complainant's Exhibit No. 6. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

170 COMPLAINANT'S EXHIBIT No. 7.

Consolidation of Walker Lake and Bodie Toll Road Co., Walker Lake Wood and Lumber Co., town of Hawthorne, Hawthorne Water Works.

H. M. Yerrington, prest.; Geo. F. Ford, sec'y.

The Southern Development Co. of Nevada.

STERLING MINE, INYO CO., CAL., 25*th April*, 1884.

H. M. Yerrington, Esq.

DEAR SIR: I have adopted the plan of working advised to Mr. Ford to-day, because I cannot take out such ore as it is wanted in quantity. The last taken out was galena, & I supposed I could bring up the average of what I had on the dump with this, but could not get any of it above 20 oz., so concluded you would sooner have the ore left in the mine than extracted, if not above the figure. So far, whenever I have taken down ore, have found it to be a bunch or the ledge small and broken—quartz mixed through it, & etc.; also have found over a dozen drill holes, by which means the ledge had been sample- thoroughly. Came to the conclusion I had better leave than ship ore I knew wouldn't pay, so asked to be relieved on the 23d inst., two days after I got to assaying & found out how the ore was going.

Yours very truly, H. W. COFFIN.

171 (Endorsed:) Complainant's Exhibit No. 7. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

172 COMPLAINANT'S EXHIBIT 8.

Certificate of Redemption of Real Estate Purchased by the State.

Estimate of the amount required to redeem the within-described real estate, which was sold to the State on the 27th day of February, 1885, for the delinquent taxes of 1884 and redeemed on the 22nd day of June, 1886, in accordance with the provisions of an act entitled "An act to amend an act entitled An act to establish a political code, approved March 12th, 1872, by adding a new section thereto, to be known as section 3817, relating to redemption of lands sold to the State for delinquent taxes," approved March 2d, 1883:

Description of real estate.—1,500 feet in the "Sterling mine," situated in Coso mining district; mining and blacksmiths' tools, assessed to the "Southern Development Company."

Delinquent State and county taxes of 1884 on real estate	$48 75
Delinquent State and county taxes of 1884 on personal property	4 88
Delinquent poll tax	
173 Additional five per cent.	2 69
Costs	1 50
Sold to the State for	57 82
Interest on the above amounts	5 40
State and county taxes of 1885	53 63
Interest on above taxes	1 78
State and county taxes of 18—	
Interest on above taxes	
State and county taxes of 18—	
Twenty-five per cent. of above amounts	29 66
County auditor's fee	2
	150 29

STATE OF CALIFORNIA, *Inyo County:*

I, W. L. Hunter, county auditor in and for said county, State aforesaid, do hereby certify that the foregoing statement contains a full and correct estimate of the amount for which the above real estate was sold to the State, with twenty-five per cent. of said amount in addition thereto, with interest on the State and county taxes on the real estate from the day of sale to the day of redemption, together with all unpaid State and county taxes for each year since
174 said sale, whether assessed or not, with interest on said taxes from the first day of January of the respective years next after said taxes were levied to the day of redemption at seven per cent. per annum; also the county auditor's fee for making said estimate.

Witness my hand, affixed at Independence, this 22nd day of June, 1886.

[SEAL.]

W. L. HUNTER,
County Auditor.

NOTE.—The thirty-fifth fiscal year commences July 1st, 1883, so if property should be redeemed from the State at any time prior to the — Monday of July, 1883, the assessor should be notified in order that he may assess it for said year. If it should be redeemed after the first Monday of July and during the session of the county board of equalization, then that board should be notified in order that it may direct the assessor to assess it as prescribed in section 3681, political code. If it should be redeemed after the adjournment of
175 the board of equalization and before the levy of the State and county taxes for the thirty-fifth fiscal year (1883–'4), then it is a question how said taxes could be collected; but if it is redeemed after the taxes for 1883–'4 are levied, then said taxes should also be included in the estimate for the amount required to redeem.

OFFICE OF THE COUNTY TREASURER, COUNTY OF INYO.

Received of the Southern Development Company of Nevada, redemptioner, one hundred and fifty $\frac{29}{100}$ dollars, in lawful money of the United States, upon redemption of the within-described real estate under the provisions of an act of the Legislature of the State of California entitled "An act to amend an act entitled An act to establish a political code, approved March 12th, 1872, by adding a new section thereto, to be known as section 3817, relating to redemption of lands sold to the State for delinquent taxes," approved March 2d, 1883.

176 Witness my hand this 22nd day of June, 1886.

GEO. H. HARDY,
County Treasurer.

Recorded, at request of A. R. Conklin, June 23rd, A. D. 1886, at 10 min's past 5 o'clock p. m., in Liber "P" of Deeds, at page 233.

W. L. HUNTER,
County Recorder,
By R. L. PEELER.
Deputy Recorder.

(Endorsed:) Complainant's Exhibit 8. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

177 COMPLAIN-T'S EXHIBIT 9.

AUDITOR'S OFFICE,
COUNTY OF INYO, STATE OF CALIFORNIA.

I hereby certify that I have, on this 22nd day of June, 1886, received from A. R. Conklin for the Southern Development Company a receipt of the treasurer of Inyo county, dated June 22nd, 1886, and containing the auditor's estimate of the amount (and specifying the several amounts thereof) necessary to be paid to redeem that certain tract of land situate in said county of Inyo and described as follows, to wit: 1,500 feet in the Sterling mine, situated in Coso mining district; mining and blacksmiths' tools, and assessed to the Southern Development Company.

Said land was sold to the State Feb. 27th, 1885, for delinquent taxes for the year 1884, said receipt being made on the application of A. R. Conklin for the Southern Development Company, the person desiring to redeem, for the amount of $57.82 and the taxes,
178 cost, and charges since accrued thereon, amounting to the further sum of $92.47, making a total of $150.29, specified in said estimate, in accordance with an act entitled "An act to amend an act entitled An act to establish a political code, approved March 12, 1872, by adding a new section thereto, to be known as section three thousand eight hundred and seventeen, relating to redemption of lands sold to the State for delinquent taxes," approved March 2, 1883.

W. L. HUNTER,
County Auditor.

(Endorsed :) Recorded, at request of A. R. Conklin, June 23rd, A. D. 1886, at 12 min's past 5 o'clock p. m., in Liber "P" of Deeds, at page 234. W. L. Hunter, county recorder. R. L. Peeler, deputy recorder. Complainant's Exhibit 9. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

179 COMPLAINANT'S EXHIBIT 10.

Deed.

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and eighty-six, between John Wilson, of the county of Inyo, State of California, party of the first part, and the Southern Development Company of Nevada, a corporation formed and existing under the laws of the State of Nevada, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release, and forever quitclaim unto the said party of the second part and to its successor and assigns all that certain mining claim situate, lying, and being in the New Coso mining district, county of Inyo, State of California, and described as follows, to wit: All that certain vein, lode, or ledge of mineral-bearing rock situate about ten (10) miles south-
180 wardly from the town of Darwin, on the west slope of the Argus range of mountains, and being fifteen hundred (1,500) feet in length northwesterly and southeasterly and six hundred (600) feet in width, said mine being now known and designated as the "Cuba mine," but formerly known as the Sterling mine, said mine having been located under the name of the "Sterling mine" on the sixth day of December, 1874, by W. B. Herbin, A. W. Sterling, and Henry Dunlap, notice of which location was duly recorded in the office of the mining recorder of said district December 9th, 1874, in Book "A," page 97, of said record, and which said mine was relocated by the party of the first part on the first day of January,

1886, under the name of the "Cuba mine," together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold all and singular the said premises,
181 together with the appurtenances, unto the said party of the second part and to its successor and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN WILSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. V. CONKLIN.

STATE OF CALIFORNIA, } ss:
County of Inyo, }

On this twenty-second day of June, 1886, before me, A. R. Conklin, a notary public in and for the county of Inyo, personally appeared John Wilson, known to me to be the same person whose name is subscribed to the annexed and foregoing instrument, and acknowledge to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the county of Inyo, the day and year in this certificate first above written.

[SEAL.] A. P. CONKLIN,
182 *Notary Public in and for the County of Inyo, State of California.*

(Endorsed:) Recorded, at request of A. R. Conklin, June 23d, A. D. 1866, at 10 min's past 8 o'clock a. m., in Liber P of Deeds, at page 231. W. L. Hunter, county recorder. Complainant's Ex. 10. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

183 COMPLAIN-T'S EXHIBIT 11.

Certificate of Incorporation of the Southern Development Company of Nevada.

Know all men by these presents, that we, the undersigned, have this day associated ourselves together for the purpose of incorporating, under the laws of the State of Nevada, a corporation to be known by the corporate name of the "Southern Development Company of Nevada."

And we hereby certify, set forth, and declare that the objects for which this corporation is formed are to buy and sell lands, town lots, and other real property; to build, maintain, and operate toll roads, and thereon to collect and receive tolls; to buy, locate, hold, and possess water and water rights and privileges, and construct, lay

down, and maintain reservoirs, flumes, ditches, pipes, aqueducts, and conduits for the collection and transportation of water; to supply and sell water to the inhabitants of towns, cities, and other
184 places for domestic, mechanical, and other uses, and to build and operate flumes for the transportation therein, by means of water, of wood, lumber, and timber;

To buy, sell, hold, own, and possess timber lands, and to build, own, and operate saw-mills and machinery, and to manufacture, trade in, and sell all kinds of wood, timber, and lumber;

To engage in the building, construction, maintainance, or operation upon contract and for others of railroads, toll roads, flumes, ditches, saw-mills, machinery, and other improvements;

To acquire and hold all such property, real and personal, as may be necessary for the proper carrying out of the objects aforesaid, and to engage in any such species of trade, business, or commerce, foreign or domestic, as may be found requisite or advantageous in and about the matters herein set forth and declared.

The amount of the capital stock of this company shall be six hundred thousand dollars.

185 The time of the existence of the company shall be fifty years.

The capital stock shall consist of six thousand shares of the par value of one hundred dollars each, lawful money of the United States.

The number of trustees of this corporation shall be five, and the following are named trustees, who shall manage the concerns of the company for the first six months: H. M. Yerington, D. L. Bliss, D. A. Bender, W. D. Tobey, H. L. Tickner.

The principal place of business of the company shall be located at Carson City, Ormsby county, State of Nevada.

In witness whereof we have hereunto set our hands and seals this sixth day of October, A. D. 1881.

H. M. YERINGTON. [SEAL.]
D. L. BLISS. [SEAL.]
D. A. BENDER. [SEAL.]
W. D. TOBEY. [SEAL.]
H. L. TICKNER, [SEAL.]

186 By D. A. BENDERLUS,
Attorney-in-Fact.

STATE OF NEVADA, } ss:
County of Ormsby, }

On the sixth day of October, A. D. one thousand eight hundred and eighty-one, personally appeared before me, Charles Martin, a notary public in and for the said county of Ormsby, in the State of Nevada, H. M. Yerington, D. L. Bliss, D. A. Bender, and W. D. Tobey, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said instrument as parties thereto, and who each duly acknowledged to me that he executed the same

freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[NOTARIAL SEAL.] CHARLES MARTIN,
Notary Public.

187 STATE OF NEVADA, } ss:
County of Ormsby, }

On this eighth day of October, A. D. one thousand eight hundred and eighty-one, personally appeared before me, Charles Martin, a notary public in and for said county of Ormsby, in the State of Nevada, D. A. Bender, personally known to me to be the same person described in and who executed, by power of attorney, the foregoing instrument, as the attorney-in-fact of H. L. Tickner, named in the foregoing instrument as a party thereto and herein described as the party executing the same, by his said attorney, and the said D. A. Bender acknowledged to me that he executed the same freely and voluntarily as and for the act and deed of the said H. L. Tickner and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[NOTARIAL SEAL.] CHARLES MARTIN,
Notary Public, Ormsby County, Nevada.

188 STATE OF NEVADA, } ss:
County of Ormsby, }

I, M. D. Hatch, county clerk and *ex officio* clerk of the second judicial district court in and for said county and State, do hereby certify that the foregoing is a full and correct copy of the original certificate of incorporation as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 8th day of Oct., A. D. 1881.

[Seal of 2nd Judicial District Court.]

M. D. HATCH, *Clerk.*

STATE OF NEVADA, } ss:
Department of State, }

I, John M. Dormer, secretary of state of the State of Nevada, do hereby certify that the foregoing is a true, full, and correct copy of the original certificate of incorporation of Southern Development Company of Nevada as the same appears of record and on file in my office.

189 In witness whereof I have hereunto set my hand and affixed the great seal of *of* State. Done at my office, in Carson City, Nevada, this twelfth day of May, A. D. 1883.

[The Great Seal of the State of Nevada.]

JOHN M. DORMER,
Secretary of State.

EXHIBIT A.

Certificate of incorporation of the Southern Development Company of Nevada. Dated October 6, 1881. Filed in the office of the secretary of state of Nevada October 8th, A. D. 1881.

JASPER BABCOCK,
Sec't'y of State,
By J. G. CHESLEY, *Deputy.*

Recorded in vol. 2 of Incorporations of Nevada, pages 208, '9, '10, & '11.

PEOPLE OF THE STATE OF CALIFORNIA *vs.* FRANK SILVA.

Filed in evidence and marked Pl'ffs' Exhibit "A" this 25th
190 day of June, 1884.

THOMAS PARKER,
Justice of the Peace of the Third Township, Inyo County, Cal.

Filed Nov. 13, 1884.

THOS. CROUGH,
County Clerk,
By J. E. PARKER, *Deputy.*

OFFICE OF THE COUNTY CLERK OF INYO COUNTY,
STATE OF CALIFORNIA.

I, W. L. Hunter, county clerk of the county of Inyo, State of California, and clerk of the superior court in and for said county, do hereby certify the foregoing to be a full, true, and correct copy of the certificate of incorporation of the Southern Development Company of Nevada (with the indorsements thereon) as filed in my office on the thirteenth day of November, A. D. 1884.

Witness my hand and the seal of said court this 23rd day of June, A. D. 1886.

[SEAL.] W. L. HUNTER,
County Clerk.

191 (Endorsed:) Complainant's Exhibit 11. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

192 RESPONDENT'S EXHIBIT C.

DARWIN, INYO CO., CAL., *May 24th*, 1886.

Mr. Jack Wilson.

DEAR SIR: I arrived in this place this afternoon. One purpose of my visit to this section is to examine and make a survey of the Sterling mine. I wish to do this as an act of justice to my chief, Frank Silva. I have been informed that you have taken possession of the mine, and that you will not allow me to visit it. Please let me know whether you hold possession of it for yourself or for the Southern Development Company of Nevada. I do not desire to commit any trespass, but I say to you that you will assist in the ad-

ministration of justice if you will permit me to visit & inspect the mine. Please answer by bearer. I may go out to the mine tomorrow, as I think after I explain the matter fully to you you will not object to my request.

Hoping to hear from you, I remain very truly yours,

RICH'D S. MINER.

193 As I know, from what you told me and from the records, that you have relocated the mine, I think you can give me permission to visit it.

(Endorsed:) Respondent's Exhibit C. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

194 RESPONDENT'- EXHIBIT D.

R. S. Miner, Esq.

DEAR SIR: In reply to yours of the 24th, I will state that I am here and in full possession of this mine, and also that I am here on my "own business" and for my "own interests," and also that the Southern Development Company could not hire me to come here for them, as I ignore any right which they may claim to this mine, as they have, in my opinion, abandoned it. However, I am fully aware that the "ownership" of the mine "lays" between me and the R. R. Co., and also that nobody has got any right or title to the mine "or claims any," excepting myself and the said Co., and I suppose its them and me for it.

Now, "my friend," I have my own ideas about "this business" and my own interests also to look after, and I don't want any advice. I am here to prevent any and all persons from entering upon the said mine or premises for any purpose whatever, and neither talk nor money will buy or influence me in any way.

195 I am here "to stay" by the proposition and don't intend to have any surveys made at the present time.

In conclusion, I would say that it's "no use" coming here to talk about the matter and explain, because I have told you more in this note than I first intended and "I mean it."

Yours truly, JOHN WILSON.

(Endorsed:) Respondent's Exhibit D. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

(Here follows diagram marked p. 196, Respondent's Exhibit E.)

197 RESPONDENT'S EXHIBIT N.

North drift, up raise, N. deep, 6 inch-, 15 wide; length, 100 ft.; winze N. 2, 38 ft. level; Modoc winze, 3 ft. south, 28 winze N. 2, with ledge raise 15 ft.; ledge, 3 ft.; on chamber below ledge, 3½ ft.; width chamber, 17 x 21.

(Endorsed:) Respondent's Exhibit N. Clement Bennett. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

198 RESPONDENT'S EXHIBIT O.

JUNE 7, 1886.

North drift, up raise, 6 inche- on 15 ft.; length drift, 100 ft. long; winze No. 2, 39 ft.; level, south, 28 ft.; Modoc winze, 3 ft.; on raise, 15 ft.; ledge, 3 ft.; on ledge chamber below, 3½ ledge; width of chamber, 17 x 21.

(Endorsed:) Respondent's Exhibit O. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

200 RESPONDENT'S EXHIBIT Q.

Virginia and Truckee Railroad Co., Carson and Colorado Railroad Co.

Paymaster's office; Geo. T. Mills, paymaster.

CARSON, NEVADA, *Nov.* 12, 1883.

John Eddy, Esq., 108 Davis St., S. F.

DEAR SIR: I came to Carson this a. m. I write to ask you if an offer of $10,000 cash will get Frank Silva's mine. I can get no higher bid and can almost assure an immediate sale at that price, and I think it is enough. In case of a sale I would expect at least $500 commission, as I have worked hard on the proposition. Please answer me at once and address me at Independence. Please don't fail to see Mr. Miller.

Very truly yours, S. D. WOODS.

(Endorsed:) Respondent's Exhibit Q. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

201 RESPONDENT'S EXHIBIT R.

Virginia and Truckee Railroad Co., Carson and Colorado Railroad Co.

Paymaster's office; Geo. T. Mills, paymaster.

CARSON, NEVADA, *Dec.* 14, 1883.

MY DEAR EDDY: I hope- to see you in Carson yesterday or to-day. I telegraph- for you to meet me here & rec'd in reply the telegram I enclose. As I knew you would see Mr. Yerington on the train I was not as much disappointed as I might have been. Mr. Y. is the party who authorized me to offer $10,000; that offer is still good, & I want to see you soon about it. Please write me at Independence on receipt of this and greatly oblige me.

As ever, truly yours, S. D. WOODS.

(Endorsed:) Respondent's Exhibit R. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

202 RESPONDENT'S EXHIBIT S.

INDEPENDENCE, *Dec.* 18, '83.

John E. Eddy, Esq.

DEAR SIR: Yours rec'd. I have sent your letter to Mr. Yerington & will go & see him on Monday & write you from Carson. Hold Silva till I answer.

Yours truly, S. D. WOODS.

(Endorsed:) Respondent's Exhibit S. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

203 RESPONDENT'S EXHIBIT T.

DARWIN, *March 10th*, 1884.

J. C. Eddy, Esq.

DEAR SIR: I enclose a letter from S. D. Woods to me that will explain itself. I spoke to Silva and he refused to pay the commission, but could give no good reason for doing so. He certainly should pay it, for you know but for the work Woods done the sale would not have been made. Silva promised to see me again about the matter but has not done so, and I understand has gone out to his mine; at any rate, I have to return to Reilly this morning, in case Silva concludes to do the fair thing, and pay the commission. Please send half to Woods and keep my half.

Yours truly, J. T. THOMPSON.

(Endorsed:) Respondent's Exhibit T. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

204 RESPONDENT'S EXHIBIT U.

Cuba Ledge.

Notice.

I, the undersigned, do hereby relocate and claim fifteen hundred (1,500) linear feet on this ledge or lode, containing gold, silver, lead and other metals, together with three hundred (300) feet on each side of said ledge or lode, commencing at this monument, built of stone and about three feet high, on which a copy of this notice is posted, at a point on the ledge situate about one hundred feet northerly from the mouth of the tunnel on the ledge, and thence running and extending in a southeasterly direction a distance of one thousand linear feet and in a northwesterly direction from the said monument and notice a distance of five hundred (500) linear feet on the said ledge or lode. This mine or ledge was formerly known as the Sterling mine, and is situate about twelve miles in a southeasterly direction from Darwin, on the west slope of the Maturango

205 range, in the "Coso" mining district, county of Inyo and State of California, and shall now be known and called the "Cuba" ledge, relocated and claimed this first day of January, A. D. 1886, at 1 min. past 12 a. m. of said day.

JOHN WILSON, *Locater.*

Filed for record at 10.30 o'clock p. m., January 1st, A. D. 1886. Recorded at 11.20 p. m., January 1st, A. D. 1886.

N. S. THOMSON,
Recorder Coso Mining District.

I hereby certify that the above is a correct copy of notice of location of the Cuba ledge as it appears in my office in Book E, page 88.

N. S. THOMSON,
Recorder Coso Mining District.

(Endorsed:) Respondent's Exhibit U. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

206 RESPONDENT'S EXHIBIT U.

(*Letter.*)

INDEPENDENCE, *March* 1, '84.

MY DEAR THOMPSON: It has stormed so since I got your letter that I have delayed writing until new. In reference to sale of silver mine I will say it is consum-ated, but I am not able to say whether Silva will pay commission or not.

Several months ago Mr. Yerington authorized me in Carson to offer $10,000. I obtained his consent to obtain, if possible, $500 commission from Silva. I made the offer through John Eddy, & reiterated the offer time and again. I at last received from Eddy a letter saying that Silva would not take less than $12,500, and that out of that he would pay $500 to me. I sent the letter to Mr. Y. and went to Carson to insist that he make another examination of the mine, and presented in figures in detail that no loss could follow the purchase of the mine. Mr. Y. consented, and did at once make the examination, and made an offer of $10,000, which was accepted.

Ever since Mr. Bliss & Forman's examination last summer I
207 have persisted in my efforts to have R. R. folks buy. Mr. Miller knows how earnest were *by* efforts in that behalf. Now, whether Silva will pay the 500 or not I cannot say. He should pay it, as he sold to my parties. See Eddy and him and say what I say & get the 500. ½ belongs to you if obtained. Please attend to this at once and advise me. Mr. Y. always understood that I should have the commission if Silva would pay it. Write me soon.

As ever, S. D. WOODS.

(Endorsed:) Respondent's Exhibit U. Clement Bennett, examiner. Opened & refiled Aug. 9, 1886. L. S. B. Sawyer, clerk.

(Here follows diagram marked p. 208, Respondent's Exhibit V.)

209½ *Stipulation.*

In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,

vs.

FRANK SILVA, Defendant.

It is hereby stipulated and agreed that the two models marked "Complainant's Exhibit 2" and "Respondent's Exhibit F," also "Complainant's Exhibit Rock Sample No. 1" and "Respondent's Exhibits Rock Samples H, I, K, M, G, J, and L," used at the hearing of the above cause to il-ustrate the evidence in the cause, shall be omitted from the record on appeal to the Supreme Court, and that no copies thereof need be sent with the record by the clerk.

Dated September 30th, 1887.

P. REDDY,
Solicitor for Complainant.
LANGHORNE & MILLER,
Solicitors for Defendant.

(Endorsed:) Filed September 30, 1887. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

210 *Opinion.*

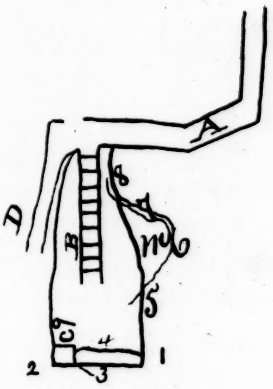
In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Respondent. } No. 3431.

Sawyer, circuit judge; Sabin, district judge, concurring:

This case has been very exhaustively and ably presented by the respective counsel. It may well be doubted whether the bill ought not to be dismissed on the ground that the parties cannot be placed *in statu quo;* also whether it ought not to be dismissed for want of jurisdiction on the ground that the complainant has an ample
211 remedy at law within the rule recently laid down by the Supreme Court in Buzard *vs.* Hamton, 7 Sup. Court Reporter, 249, brought to our notice since the following opinion was written; but upon the view we take, after a careful examination of the evi-

No. 1210
The Southern
Development Co
v.
Silva
} p. 208



Respondents Exhibit V

Clement Bennett
Examiner

Opened & refiled Aug 9. 1886
L.S.B Dawson
Clerk

dence, it will not be necessary to discuss these or the numerous other technical grounds relied on by the defense, assuming, for the purposes of this decision, that they should all be determined in favor of the complainant; the bill must still be dismissed on the merits. The elements of such fraudulent representations as will entitle the complainant to maintain his bill are well stated by respondent in the language of Professor Pomeroy:

"A misrepresentation in order to constitute fraud must contain the following essential elements: (1) Its form as a statement of fact; (2) its purpose of inducing the other party to act; (3) its untruth; (4) the knowledge or belief of the party making it; (5) the belief, trust, or reliance of the party to whom it is made; (6) its materiality."

212 The material allegations of the bill are categorically and expressly denied by the respondent, and, as an answer on oath is not waived, they must be overthrown by the evidence of two witnesses or that of one and other circumstances satisfactorily proved equivalent to another. (Schlessinger *vs.* Buckingham, 8 Saw., 471; Vigel *vs.* Hopp., 104 U. S., 441; Morrison *v.* Dun, 7 Sup. C't Reporter, 1225.) And even when there are two witnesses their testimony must be satisfactory. The burthen of proof is on the complainant, and a court of equity will not set aside a contract on the ground of fraudulent representations, especially when they are oral and liable to be misunderstood, unless the proofs are of the clearest and most satisfactory character. Fraud is odious, and never to be presumed. These are principles that have been so long and so often repeated that they have become elementary. The specific

213 fraudulent representations relied on are numbered by complainant in his argument from 1 to 7, inclusive. A full discussion of the evidence would be unprofitable, and we shall only briefly indicate the salient points and the results as they appear to our minds.

The alleged misrepresentations relied on in argument of counsel, 1, 2, 2*a*, and 6, are the most important and vital. The witnesses, as to the representations alleged on the part of complainant, are Yerrington, who made the purchase for complainant, and Forman, an expert in his employ, to examine the mine with a view to purchase; and the witnesses on part of the respondent are the respondent Silva himself and Eddy, who does not appear to be *be* an interested party and who was present during the entire examination and conversations, except while out a few moments at one time to get a pick for Yerrington's use. So far as appears all are respectable

214 and credible witnesses, and there is no reason to believe that either gave, wilfully, false testimony or testimony colored or modified otherwise than is liable to occur from interest, bias, or from the different standpoints from which the matter is viewed by the different witnesses. Misrepresentation numbered 1, as stated in the bill, is as follows:

"That said defendant then and there, with intent to deceive and defraud this complainant, did knowingly and designedly, falsely and fraudulently, represent and pretend to this complainant that no

work had been done in or upon or about said ore vein to show or which did show that said ore vein did not continue dow-ard or lengthwise from said cut."

This allegation is denied, and there is no proof that respondent made any such representation, even taking complainant's testimony in its strongest aspect. At the point in question Silva had
215 done no work. The complainant's testimony on this point by both Yerrington and Forman is as follows, stated in Yerrington's language: "I said," speaking to Silva, "why did you not go down on it? He said, "For mining purposes the tunnel, he believed, was the proper place." There was a tunnel at a lower level intended to cut the vein below. The purchasers must have concurred with Silva in this view, for as soon as the purchase was made they themselves commenced work by extending this tunnel to cut the vein. Besides, Silva, so far as the testimony shows, had never in fact done any work at that point to ascertain whether the vein did continue downward or lengthwise, nor was he aware at the time that anybody else had done so, nor is there any direct evidence to show that he knew whether it did or not extend downward or lengthwise. It appeared afterward that parties who owned the claim before Silva did had, eight or nine years before, run a
216 small shaft down a short distance through the vein at that point and filled it up, but that Silva was entirely ignorant of this fact. This will be noticed again on misrepresentation number 6. Now, this evidence does not show or tend to show that Silva represented that "no work had been done in or upon or about said ore vein to show or which did show that said ore vein did not continue downward or lengthwise from said cut." Much less does it show or tend to show, in opposition to his express denial that this representation was falsely or fraudulently made. He was not asked whether anybody else had done any work there to ascertain the extent of the ore; nor did he say whether any work had been so done. He only gave as a reason, when asked for one, why he did not "go down on it," in the language of Yerrington, or "did not sink on it here," in Forman's language, and which he had not in fact done, that
217 he thought "the tunnel there was the proper place." This allegation of misrepresentation wholly fails for want of proof.

As to misrepresentations numbered 2 and 2*a* the allegations of the bill are that he falsely and fraudulently stated "that the bottom of said chamber was composed of ore of the same kind," &c. These allegations are categorically denied in the sworn answer.

Yerrington testified that Forman said to Silva: "Now, Silva, under this ore" (ore that had crumbled and fallen down on the floor) "is this floor solid ore?" And he said, "Yes." "State whether there was any comparison made as to the quality of the ore between the ore on the sides of the chamber and the ore that was said to exist in the bottom, beneath the loose stuff." "Answer. I do not think so." "State whether Silva said at any time during the conversation there that the bottom was composed of the same kind of ore that was found on the sides of the ore cham-

ber." "Answer. I do not remember that." On a sub-
218 sequent day, however, he corrected his testimony so that it corresponded with Forman's, and said that he had refreshed his memory on these points, and that Silva, in reply to Forman's question, said, "It is good ore, and as good ore as you will see here" (referring to Silva), "if not better." And Forman makes a like statement in his testimony. Silva, in addition to his positive denial in his answer, testifies on this point positively that there "never was a word said about that." He added that, "They asked me what I thought of the ore body, and I said I thought it would be extensive. I thought so at the time, and think so yet." Eddy does not appear to have heard any such statement. On this point, then, the testimony of Silva is directly to the contrary to that of Yerrington and Forman. Yerrington did not remember on the first day, but did on the second, after refreshing his recollection. This testimony
219 was taken in June, 1886, about two years and a half after the conversations related took place. They were present at the time examining the mine and engaged in the conversation for an hour or more.

These discrepencies in matters of detail during a long conversation, related by different parties, viewing the subject from different standpoints after the lapse of so long a period of time, are no more than might reasonably be expected, even in honest witnesses. There is no occasion to impute any intention to testify falsely to either. Viewing the case with all the surrounding circumstances, and considering the presumption of innocence, we do not think that we should be justified in finding that Silva knowingly and willfully made the representation in the form stated by Forman and finally by Yerrington, after a night's reflection and refreshing his memory, or made it substantially as stated by them.
220 Testimony as to oral statements by parties antagonistic in interest, and especially after a considerable lapse of time, are always unsatisfactory. Parties are extremely liable to misunderstand each other, and in looking back upon the transaction in the light of subsequent developments are prone to take the view most advantageous to themselves. It is on the ground that oral contracts of importance are forbidden and made void by the statu-e of frauds. If one party desires to hold another responsible for representations made in a contract of great moment it is easy to put them in writing, and he who neglects to do so must be held to make the most clear and satisfactory proof of oral representations upon which he relies to avoid a contract where there is a disagreement as to what was said.

Silva nowhere appears to have been anxious to sell. He did not seek Yerrington with a view of selling him the mine, but Yerrington sought Silva. He seems to have been the most anxious
221 for the transaction. Silva had owned the mine for several years. It was not he that fixed or named the price even. Yerrington sought to know for what sum he would sell. His first price was $15,000. Yerrington finally offered $10,000, which was at first declined, but finally accepted. Yerrington and his expert, both

men of large experience in mines and contracts for mines, not likely to rely very much on mere representations in such matters, were there examining for themselves and seeking to purchase, and not Silva pressing him to purchase. There is no such anxiety manifested by Silva to sell as would lead us to suspect that he would knowingly and willfully make false and fraudulent representations in order to secure a purchaser and then support them by flat perjury. His course, both before and after the sale, was such as a man would be likely to pursue who is conscious of having acted honestly.

He openly, with Yerrington's knowledge, left his money on
222 deposit where he must have known that it could be reached upon discovery of fraud, which must have soon followed if any there were. We feel compelled to find against the complainant on the alleged misrepresentation- numbered 2 and 2*a*. On branch 2*a* defendant's denial is only opposed by one witness, and he an interested one, and on bra-ch 2 Yerrington was uncertain or did not recollect on the first day, but remembered after refreshing his memory on a subsequent day.

The next are alleged misrepresentations numbered 3 and 4, as to the quantity of ore in sight. It is manifest from complainant's own testimony that this was a mere expression of opinion as to quantity. Silva said, in express terms, as stated by Yerrington himself, that "in his judgment" there was so much in sight. Yerrington differed, and thought there was much less. The difference in opinion was discussed between them, and according to Yerrington's own testimony he did not rely on this statement. There is no suffi-
223 cient evidence to show that this was not Silva's honest opinion. Besides, Yerrington and his expert foreman were as competent to judge how much ore there was "in sight" as Silva was. They were no novices in matters of this kind. This misrepresentation, if such it be, does not contain either the first, fourth, or fifth element stated by Pomeroy as essential elements in a fraudulent misrepresentation. So as to number 5, relating to the value of the mine, Yerrington testified that Silva said, "He believed the mine was worth $15,000; that was what he wanted for it." If he made such statement it was manifestly the mere expression of opinion, and there is no direct evidence that he did not believe it. The misrepresentation numbered 6 is alleged in the bill as follows: "That said defendant did further falsely, etc., * * * represent that he had shown and pointed out * * * all cuts, openings, tunnels,
224 drifts, shafts, winzes, and work of every kind and nature which had ever been made in said mine or mining claim, and that he had fully and truly disclosed and described * * * all that he had discovered and knew concerning the extent of the work and the ore in said mine."

As to this allegation Yerrington testifies that while in this mine he said to Silva, "Now, have you shown the whole of this mine?" and he replied, "Yes; everything;" whereas Silva says I told him I "had shown him all the work that was done in the mine by me or under my direction," and this is simply statement against statement. But Yerrington says again at Carson he said to Silva before closing the bargain, "Now, Silva, * * * I want to know if you

have done any work in the mine in any way, shape, or manner around those ore bodies that you have not shown to me or told me of or of which I am ignorant," and Silva replied, "No, sir;
225 I have not." Now, that confirms Silva, as Yerrington on this occasion only asked as to Silva's own work, not what others had done, and he was seeking knowledge upon the same point as before; and, so far as the testimony goes, Silva's statement is strictly true, for there is no direct testimony tending to show that there was any work done by him that was not shown to Yerrington, and he declares positively that there was none. It turned out afterward that a small shaft had been sunk at the point of location and filled up, but it is not now even claimed that Silva dug it. It was clearly shown that this shaft had been dug and filled up several years before by one Edwards and before Silva owned the mine, and there is no evidence that Silva even knew of the shaft until after the sale, but his direct and positive evidence and other corroborative circumstances show that he did not. It is clear that he did not know of it. So even if he made the unqualified
226 declaration that he had shown all the work this was not knowingly false, as he clearly supposed he had, so far as this particular is concerned, and the fourth elements of a fraudulent misrepresentation essential to avoid the contract is wanting. There were some drill holes filled up, said to have been afterwards found in the ore, but there is no direct testimony that Silva drilled them. On the contrary, Silva testified positively that he did not drill them. Coffin testifies that later he found an old drill about six feet long outside on the hills to the left of the tunnel, which was not brought there by his orders. This and some other circumstances, such as that Silva once bought a piece of steel of which the drill found might have been made, are relied on to show that Silva did the drilling; but others owned and worked the mine before as well as after Silva owned it, and besides, a drill is daily used in
227 legitimate mining. This evidence is wholly insufficient to overthrow the direct, positive testimony of Silva that he did not do it, strengthened by the fact that he commenced running the tunnel on the 80-foot level to reach this same vein, the same tunnel which was extended by complainant after the purchase, which he would not be likely to have done had he drilled these holes and found that the vein had run out. These holes may have been drilled, also, before Silva's time, or even after his sale, by others. It is simply unknown who drilled them. At all events, the testimony is insufficient to justify us in holding that he did it or knew of them.

The allegation of misrepresentation numbered 7 is not sustained by the evidence. The proofs, in our judgment, are insufficient to sustain the bill, the allegations of which are positive- denied under oath, and the bill must be dismissed with costs.

228 It is so ordered.

(Signed) SAWYER,
Circuit Judge.

(Signed) SABIN,
District Judge.

(Endorsed:) Rec'd in open court March 14th, 1887. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

229 *Petition for Rehearing, &c.*

United States Circuit Court for the Northern District of California, Ninth Circuit. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Respondent. } No. 3431.

Complainant's petition for a rehearing and modification of decree herein.

To the judges of the circuit court of the United States for the northern district of California, ninth circuit:

The petition of the above-named complainant respectfully showeth—

That your petitioner finds itself much aggrieved by the decretal order announced and made by your honors in this cause on the fourteenth day of March last, whereby the said circuit court entertained jurisdiction of said cause and ordered the bill of your petitioner herein to be dismissed with costs, on the ground that the proofs were insufficient to sustain the allegations of said bill. And your petitioner submits that said decree is erroneous in so far as it entertains jurisdiction of said cause, and also in dismissing said bill for insufficiency of proofs, because your petitioner shows unto your honors that, as appears from said bill, your petitioner's cause of action against the respondent herein as set forth in said bill is based upon certain false and fraudulent representations stated in said bill to have been knowingly and willfully made concerning a certain mining claim known as the Sterling mine by said respondent to your petitioner through its agent, H. M. Yerrington, with intent to deceive your petitioner and to induce it to purchase said mine from said respondent, and that by means of said representations your petitioner was induced to purchase and did purchase said mine of and from said respondent and did pay him therefor the sum of ten thousand dollars; that said representations made as aforesaid by the respondent to your petitioner and particularly stated in said bill were to the effect that said Sterling mine was of great value, whereas in truth and in fact said mine was of no value whatever, which the respondent well knew when he made the aforesaid representations to your petitioner; that immediately upon the discovery of the falsity of said representations and before the commencement of this action, your petitioner executed and tendered to the respondent a good and sufficient deed of conveyance of said Sterling mine and all the property conveyed by him to your petitioner, and then and there demanded of the respondent a rescission of the said contract of purchase on the ground

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that your petitioner was induced to enter into said contract
232 and made said purchase by reason of the false representations above set forth and the fraud of said respondent, and your petitioner then and there demanded of the respondent the return and repayment of said sum of ten thousand dollars paid to the respondent by the complainant as aforesaid, $7,500 of which was at the time of said rescission represented by a certain certificate of deposit issued in favor of the respondent by a banking concern known as Wells, Fargo & Co.; that the respondent then and there refused and has ever since refused to rescind the contract or to restore to your petitioner any of the money received by him from your petitioner as above stated; that upon the foregoing facts stated in said bill your petitioner prayed the decree of this court that the said contract of sale of said mine be rescinded, and that the respondent be required to restore to your petitioner the ten thousand dollars paid to him as aforesaid.

233 And your petitioner further shows that it is not averred in said bill that the respondent is insolvent or that he is not able to respond to your petitioner for the ten thousand dollars paid him as aforesaid and also for any damages which your petitioner has suffered in the premises; that it is not averred in or shown by said bill that your petitioner has not a plain, speedy, and adequate remedy at law for the injuries and wrongs suffered by him, as stated in said bill, and that it appears from said bill that your petitioner has a plain, speedy, and adequate remedy at law, and therefore your petitioner submits that this cause is not one of equitable cognizance, and that this honorable court therefore has no jurisdiction of this cause, and it should therefore make and enter a decree herein dismissing said bill for want of jurisdiction and without prejudice to your petitioner maintaining and prosecuting any action at law or other proper proceeding against the respondent in the premises,

234 and for this reason the decretal order made herein is erroneous in so far as it entertains jurisdiction of this cause, and that your petitioner is aggrieved thereby because the decree as made herein may be urged against the respondent as a bar to any action which the complainant may bring or has brought at law to recover from the respondent the ten thousand dollars paid to him as above stated.

And your petitioner further shows that the proofs herein are sufficient to sustain and do sustain and establish the allegation of the bill.

And your petitioner shows the following particulars in which the evidence sustains the material allegations of said bill:

I.

The evidence shows the facts that the respondent represented to the complainant's agent, H. M. Yerington, that the ore in the bottom of the ore chamber referred to in the bill was as good as the ore in the sides of said ore chamber; that said representation was

235 not true, as respondent well knew in making it, and that your petitioner relied upon it as true, and but for which it would

not have purchased the above-mentioned property from respondent; that the fact that the aforesaid representation was made, that it was false and willfully made, that it was material, and that it induced your petitioner to purchase said mine from the respondent is shown by the testimony of two witnesses, namely, H. M. Yerington and Charles Forman, while on the part of the respondent there is no opposing testimony except that of the respondent; that of the principal reasons given in the opinion of the court that the issue as to the aforesaid representation number 2 was not sustained by the proofs appear to be that the witness Yerrington, in giving testimony herein, first stated that he did not remember whether or not the respondent, Silva, repre-
236 sented that the bottom of the ore chamber was composed of the same kind of ore that was found on the sides of the ore chamber, and that on a subsequent day he corrected his testimony, saying that he had refreshed his memory, and he thereupon testified that respondent did represent that the ore in bottom of the chamber was as good as that on the sides of the chamber, and your petitioner submits that the credibility of the witness Yerington or the accuracy of his testimony is in nowise affected by the circumstance that he did not in the first instance remember the fact of the respondent making the aforesaid representation, because it appears from the testimony herein (vol. 1, p. 93) that the witness Yerrington testified that he had the means of refreshing his memory, and that after the use of such means he then testified positively to the making of the aforesaid representations by the respondent. The witness
237 Yerrington was not questioned as to what means he had or used in refreshing his memory, nor did he testify what such means were; and your petitioner submits that in the absence of anything showing that said Yerrington did not have sufficient and proper means of refreshing his memory so that he could testify as to the exact fact there is no reason to impeach his credibility or accuracy.

Your petitioner further represents that respondent in his testimony (vol. 3, p. 1167) stated that after he bought the mine he did all the work shown on Respondent's Exhibit E; that he made the main tunnel, did all the work on that level and below it; this includes the ore chamber, as that is below the tunnel level. It further appears that the work which had been done in the ore chamber developed the fact that the ore had given out and the bottom of the chamber was composed of lime. (Coffin's testimony, vol. I, pp. 255–'6: Price's testimony, vol. I, pp. 345–'6; Creer's testimony, vol.
238 III, pp. 1148–'9; Bartlett's testimony, vol. III, p. 1181; Eddy's testimony, vol. III, pp. 1038–'39.)

And that at the time the representations were made by the respondent the bottom of the ore chamber was covered with loose dirt and ore, so that it could not be seen or examined. (Yerrington's testimony, vol. I, pp. 55, 94; Forman's testimony, vol. I, pp. 194, 236–'7–'8; Coffin's testimony, vol. I, p. 254; Silva's testimony, vol. III, p. 1101; Eddy's testimony, vol. III, pp. 910–'1, 913–'4.)

Your petitioner therefore submits that the testimony establishes the fact that the respondent did the work in the ore chamber which

disclosed the fact that the bottom was in lime; that this was a material fact showing that the ore body was not continuous and that the mine was of no value, and that this fact was concealed from your petitioner by the respondent by means of his representation that the ore in the bottom of the chamber was as good as
239 that on the sides of the chamber.

2. And your petitioner further shows that the evidence proves that the respondent represented to your petitioner's agent, H. M. Yerington, at the close of the examination of the Sterling mine, and prior to the purchase thereof that he had shown and pointed out to said Yerrington and Charles Forman all the work which had been done in the mine and all work which would throw any light on the quantity of ore therein or the extent of the deposit, which representation was not true, as the respondent well knew when making it; that said representation was material, as it appears that the respondent had done work which disclosed the fact that the ore bodies in said mine were not continuous or extensive, and that the same was of no value, and that your petitioner relied upon said representation as true, but for which it would not have purchased said property.

240 Your petitioner introduced the testimony of two witnesses, namely, H. M. Yerington and Charles Forman, which directly sustains the allegations of the bill as to the aforesaid representation.

It further appears, from the opinion of your honors filed in this cause, that your honors overlooked the fact that the witness Charles Forman testified that the aforesaid representations was made by the respondent, it being stated in said opinion that the testimony of the witness Yerrington was overcome by the testimony of the respondent Silva, as this was "simply statement against statement." The testimony of the witness Forman upon this point is found in volume one, page 198, of the testimony.

Your petitioner further shows that it appears from the testimony that certain explorations had been made in said mine by means of drill holes, which disclosed the fact that the ore bodies thereof were not continuous and were of no value. Whether or not
241 these holes had been drilled by the respondent or with his knowledge, or whether or not he knew of them, was a material question at issue. In the opinion of your honors it is said that the holes might have been drilled before the respondent's connection with the mine and without his knowledge, and that the evidence did not establish the fact that the respondent drilled these holes or knew of their existence. Your petitioner respectfully submits that your honor overlooked the fact established by the testimony of Silva (Testimony, vol. 3, pp. 1126–7) that after he bought the mine he did all the work shown on Respondent's Exhibit E; that he run the main tunnel and did all the work on that level and below it. It is obvious that these drill holes must have been drilled after this work was done, as the opening made by the respondent were the only means of access to the places where the drill holes were found.
242 In the opinion of your honors it is stated that the respondent

testified positively that he did not make these drill holes. It appears from the testimony of the respondent (vol. III, p. 1101) that he was asked the question—

"Did you drill any holes in that chamber in any place which you afterwards concealed?"

"Answer. No, sir; I never drilled any holes in that mine except what I had to do as a miner."

The respondent further testified (p. 1104) as follows:

"Question. Did you drill any holes in this mine and fill them up?"

"Answer. I have never blasted or drilled any there except what was required as a miner."

Your petitioner further represents that the respondent does not in any other part of his testimony refer to these drill holes, except on page 1120, vol. III, where he states that Mr. Yerrington accused him of having drilled some holes there and of filling up these holes; that Yerrington accused the respondent of telling him a lie,
243 and that to this accusation the respondent replied that he (Yerrington) was badly mistaken; that he had never done any work there or at any other place but what he had shown him.

Your petitioner respectfully submits that respondent nowhere in his testimony denies that he made these drill holes, but simply denies that he drilled any holes which were not proper in mining, which testimony is in nowise inconsistent with the fact that the respondent drilled all of these holes. In addition to this the witness Yerrington testified (vol. I, p. 157) that he made a diagram in the presence of the respondent, and asked him, "Why did you have those drills done?" to which the respondent replied that he did it in a mining way; and this testimony is not denied or controverted by the respondent in any part of his testimony.

While your petitioner submits that all of the material alle-
244 gations of the bill are sustained by the proofs, it has only pointed our certain matter- which are material and which it appears from the opinion of your honors were overlooked in the consideration of the case, your petitioner not desiring to urge a rehearing on account of any matter which appears to have been fully and fairly considered by the court. Your petitioner further shows that the decree herein has not been settled and entered or enrolled.

Whereupon your petitioner prays that a rehearing of this cause before your honors be granted, and that such rehearing shall be granted at least to the extent that the decree herein should be modified and altered in so far as it entertains jurisdiction in this cause, and that such decree shall direct that the bill be dismissed for want of jurisdiction, and without prejudice to any action which the plaintiff may bring or has brought in the premises against the respondent, and your petitioner submits to pay such costs as the court
245 shall award in case his complaint shall be found groundless.

And your petitioner will ever pray.

P. REDDY,
Solicitor for Complainant.

We certify that we have examined the case referred to in the foregoing petition and are of opinion that the decretal order therein mentioned is erroneous in the particulars specified in the said petition.

WM. F. HERRING,
P. REDDY, *Counsel.*

246 *Order to Show Cause.*

In the Circuit Court of the United States for the Northern District of California, Ninth Circuit. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Respondent. } No. 3431.

Order to show cause and staying proceedings.

On reading and filing the foregoing petition of the above-named complainant praying for a rehearing of the decretal order made in this cause on the fourteenth day of March last, and on motion of P. Reddy, the solicitor of said petitioner—

Ordered, That the respondent show cause before this court, at the court-room thereof, in the city and county of San Francisco, on the fourth day of April next, at eleven o'clock a. m. or as soon thereafter as counsel can be heard, why the prayer of said peti-
247 tion should not be granted, and that in the meantime all proceedings in this case on the part of the respondent be stayed.

Dated April 2d, 1887.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Service hereof admitted by acceptance of copy this second day of April, 1887. Langhorne & Miller, sol's for complain't. Filed April 4th, 1887. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

248 *Opinion Denying Petition for Rehearing.*

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA *vs.* FRANK SILVA. } No. 3431.

Petition for rehearing.

This is a bill to rescind a contract of purchase of a silver mine on the ground of fraudulent representation and to recover the consideration paid. The mine had been worked for some time before the

filing of the bill to rescind, and exhausted of such mineral as was found in it. The defendant demurred for want of equity and
249 insisted that it was not a case for equitable cognizance, while complainant earnestly maintained the contrary. The court, being of opinion upon the authorities as they then stood that the bill presented a case for equitable cognizance, overruled the demurrer and required an answer to the bill.

An answer and replication having been filed and the testimony regularly taken in pursuance of the equity practice of the court, the case was finally heard and submitted on the merits. The defendant again at the final hearing earnestly pressed the jurisdictional objection, and the complainant as earnestly insisted upon the jurisdiction. After elaborate arguments upon voluminous
250 testimony and a full consideration the court came to the conclusion that the case was within its equity jurisdiction, and that the bill must be dismissed on the merits. The opinion on file in the case was thereupon written and concurred in by the district judge and was ready for announcement. Before the announcement a supplemental brief of defendant filed in another case, but made applicable to this also, attracted the attention of the court, in which the case of Buzard *vs.* Hamton, 119 U. S., 347, decided since the argument and submission, but not reported, was cited by defendant as sustaining his position that the case was not one of equity
251 jurisdiction. Although it seemed at first view to cover this case, upon further consideration the court was in doubt. As the complainants still failed to yield to the authority of this decision and as the bill must be dismissed in either view of the case, the decision was announced and the bill dismissed upon the merits, a reference to the case cited having been introduced into the opinion.

The decision being adverse, the complainant now changes its ground, denies the jurisdiction of the court, and seeks a rehearing mainly upon that ground, although insisting that the decree should have been in its favor on the merits and making that
252 alleged error a ground for rehearing also. The object sought is to have the bill dismissed for want of jurisdiction, in order that complainant may try the case over again in another suit, also in equity, there being one now pending as an appendage to a suit of intervention in a suit between an endorsee of the defendant and Wells, Fargo & Co. upon the certificate of deposit issued for specific purchase-money, which formed the consideration of the sale of the mines. If the court is without jurisdiction in this case it would seem to be equally so in that. The complainant's petition for rehearing on this ground is entitled to no consideration un-
253 less the court is absolutely without jurisdiction, and we are not satisfied that it is. Complainant selected its own foreman and pressed its case to a hearing and decision on the merits, against the opposition of the defendant, based on this very ground, and only desires a rehearing because it failed on the merits.

The bringing of the suit and pressing it to a hearing on the equity side of the court against the protest of the defendant should be re-

garded as a waiver of any right to try the case by a jury, and all the advantages, if any there be, that it might have otherwise enjoyed in a court of law.

254 We are by no means certain that this case falls within the decision in Buzard *vs.* Hamton. It is by no means so bald of equity as that case. There are many circumstances set out that seem to be appropriate to the jurisdiction of a court of equity.

There was a question raised as to whether the parties could be placed in *statu quo*, the complainant having worked the claim for some time and taken out the metal, so far as any was found, and there was some rich ore in sight, or the purchase would not have been made. At least so says the bill. This would seem to present a case for an accounting as to the cost of working the mine and the amount of the precious metal yielded. So, also, as

255 an answer on oath was not waived, the defendant was called upon to answer under oath, and in that aspect of the case it was substantially a bill of discovery. The answer to the material allegations of the bill denying them not only formed an issue, but it was evidence in the case called out by plaintiff.

The complainant was entitled under the equity practice to obtain his evidence in that way, however inconvenient at this day it may be. Were we to grant a rehearing and dismiss the bill for want of jurisdiction our action would at least present a fair case for appeal by the other side, and an appeal would doubtless be taken.

256 It might just as well be taken now at this point before the case becomes complicated by further action and the trial of the other suits. Should it turn out that the case is a proper one for equitable cognizance the supreme court will try the case anew and affirm the decree if found correct; or if not, then render such a decree on the merits as the evidence requires. Should the decree be reversed and the bill dismissed for want of jurisdiction we shall then know authoritatively what to do in the other suits.

That would end the litigation; whereas should we grant a rehearing and dismiss the bill for want of jurisdiction and this action

257 should turn out an appeal to be erroneous, then there is no knowing where the litigation would end or what embar-assments and complications might arise from the other suits pending.

It will be better for all parties to have the matter settled at this point. If any inconvenience should result to complainant from this course it will arise from its own action in selecting the wrong jurisdiction and against the protest of the defendant insisting upon trying the case in an improper forum. As the defendant has succeeded on the merits in spite of his objection to the forum, under all the circumstances, the inconvenience of taking the appeal should be

258 put upon the complainant. As we are in some doubt whether the case strictly falls within the rule established in the case cited, as the complainant, after selecting its for-m and insisting upon trying the case on the equity side of the court, ought not now to be heard to say that the court was without jurisdiction, and as we see no sufficient reason to be dissatisfied with the conclusions before

reached on the merits, the petition for rehearing will be denied, and it is so ordered.

(Signed) SAWYER,
Circuit Judge.

(Signed) SABIN,
District Judge.

Endorsed: Opinion on petition for rehearing read in open court this 8th day of August, 1887. L. S. B. Sawyer, clerk.

[Endorsed:] No. 3431. U. S. circuit court, ninth circuit, northern district of California. Southern Development Company of Nevada *vs.* Frank Silva. Opinion on petition for rehearing.

259 At a stated term, to wit, the July term, A. D. 1887, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Monday, the 8th day of August, in the year of our Lord one thousand eight hundred and eighty-seven.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Honorable George M. Sabin, U. S. district judge of Nevada.

Order Denying Rehearing.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA
vs.
FRANK SILVA. } No. 3431.

This cause, heretofore heard and submitted to the court for consideration and decision upon the petition for a rehearing of said cause, having been duly considered and the opinion of the court having been read—

260 It is ordered that said petition for a rehearing be, and the same hereby is, denied.

261 At a stated term, to wit, the July term, A. D. 1887, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Wednesday, the 17th day of August, in the year of our Lord one thousand eight hundred and eighty-seven.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order Allowing Appeal.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA
vs.
FRANK SILVA. } No. 3431.

On motion of Patrick Reddy and William F. Herrin, Esqs., solicitors for complainant, it is ordered that an appeal from the decree filed and entered herein by said circuit court August 8th, 1887, to the Supreme Court of the United States be, and the same hereby is,

allowed, and that a certified transcript of the pleadings, testi-
262 mony, exhibits, stipulations, and proceedings be forthwith transmitted to said Supreme Court of the United States. It is further ordered that a bond on appeal for costs and damages be given by said complainant in the sum of fifteen hundred dollars, to be approved by the judge of said circuit court.

263 *Bond on Appeal.*

In the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,
vs.
FRANK SILVA, Respondent. } No. 3431.

Know all men by these presents that we, James H. Dobinson and Henry Wadsworth, are held and firmly bound unto Frank Silva, the above-named respondent, in the sum of fifteen hundred ($1,500.00) dollars, to be paid to the said Frank Silva, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this eighteenth day of August, A. D. 1887.

Whereas the above-named complainant, The Southern De-
264 velopment Company of Nevada, has taken its appeal to the Supreme Court of the United States to reverse the final decree rendered and entered in the above-entitled cause by the above-named circuit court, and also the order or decree denying the petition for a rehearing of said cause filed by said complainant:

Now, therefore, the condition of the above obligation is such that if the said complainant, The Southern Development Company of Nevada, shall prosecute its said appeal to effect and answer all damages and costs if it shall fail to make its plea good, then the above obligation shall be void; otherwise to remain in full force and virtue.

JAS. H. DOBSON. [SEAL.]
H. WADWORTH. [SEAL.]

Sealed and delivered in the presence of—
JAMES L. KING.

UNITED STATES OF AMERICA,
Northern District of California, } *ss:*

James H. Dobson and Henry Wadsworth, being first duly sworn, depose and say, and each for himself saith, that he is worth
265 the sum of fifteen hundred dollars over and above all his just debts and liabilities.

JAS. H. DOBSON.
H. WADSWORTH.

Sworn to before me this 18 day of August, A. D. 1887.

JAMES L. KING,
Notary Public, City and County of San Francisco.

I approve of the above and foregoing bond as a supersedeas, and also approve of the sufficiency of the sureties thereto.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed August 18th, 1887. L. S. B. Sawyer, clerk.

266 United States Circuit Court, Ninth Judicial Circuit, Northern District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Respondent. } No. 3431.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California, do hereby certify *the* the foregoing two hundred and sixty-five written and traced pages, numbered from 1 to 265, inclusive, together with the testimony embraced in three volumes, numbered 1, 2, & 3, comprising twelve hundred and fifty-nine type-written pages, are a full, true, and correct copy of the record and of all proceedings in the therein and above entitled cause, excepting certain original exhibits, to wit, Complainant's Exhibit II (in box),
267 Complainant's Exhibit Rock Sample No. 1, Respondent's Exhibit F (model), and Respondent's Exhibits Rock Samples H, I, K, M, G, J, and L, excepted by stipulation of counsel from this transcript, and that the same together constitute the transcript on appeal to the United States Supreme Court.

Witness my hand and the seal of said circuit court this 30th day of September, A. D. 1887.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

L. S. B. SAWYER,
Clerk U. S. Circuit Court, Ninth Judicial Circuit, Northern District of California.

268 UNITED STATES OF AMERICA, *ss:*

To Frank Silva, respondent and appellee, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1887, pursuant to an order allowing an appeal to the Supreme Court of the United States from the final decree of the circuit court of the United States for the northern district of California, filed and entered in the said circuit court on the 8th day of August, 1887, in

that certain suit wherein The Southern Development Company of Nevada is complainant and you are respondent, to show cause, if any there be, why the said final decree and said order denying a rehearing in the said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the northern district of California, this eighteenth day of August, A. D. 1887, and of the Independence of the United States the one hundred and twelfth.

LORENZO SAWYER,
Circuit Judge.

269 [Endorsed:] 3431. In the Supreme Court of the United States. Southern Development Company of Nevada *vs.* Frank Silva. Citation. Filed August 19th, 1887. L. S. B. Sawyer, clerk U. S. circuit court, nor. dist. Cal. Original.

Service of the within and receipt of a copy hereof is hereby admitted this 19th day of August, 1887.

LANGHORNE & MILLER,
Sol's for Respondent.

(Endorsed:) Opened and refiled August 9th, 1886. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

270 In the Circuit Court of the United States for the Ninth Circuit and District of California.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,
vs.
FRANK SILVA, Respondent.

Be it remembered that on the 7th day of June, 1886, and on the several days hereinafter mentioned, at Carson City, Ormsby county, State of Nevada, and on the 15th day of June, 1886, and on the several days hereinafter mentioned, at Independence, Inyo county, State of California, before me, Clement Bennett, a special examiner in equity duly appointed by the circuit court of the United States for the ninth circuit and district of California, personally appeared the several witnesses whose names are hereinafter set forth on behalf of the respective parties in the above-entitled cause.

P. Reddy, Esquire, appeared as solicitor on behalf of complainant, and R. S. Miner, Esquire, appeared as solicitor on behalf of respondent.

The following testimony and proceedings were had:

271 LAURENCE WRINKLE, a witness called for plaintiff, sworn:

Mr. REDDY: State your name, age, place of residence, and occupation.

A. Age, thirty-nine; occupation, civil engineer and mining surveyor; residence, Virginia, Nevada.

Q. Do you know a mine called the Stirling mine, situated in the New Coso mining district, in Inyo county, California?

A. Yes, sir.

Q. Did you ever make a survey of that mine?

A. Yes, sir.

Q. How long have you been engaged in the business of surveying?

A. Sixteen years.

Q. Have you been accustomed to survey in mines and under ground?

A. I have been most of that time in the Comstock lode, and done considerable surveying in outside mines.

Q. Did you ever make a survey of the Stirling mine?

A. Yes, sir.

Q. State whether you ever made a map of the Stirling mine.

A. Yes; I have made this map now here.

Q. Examine the map that is now handed to you, and state whether that is a map made by you.

A. Yes; I made this map from an actual survey made by be.

Q. Is that a correct map of the parts of the mine which you surveyed?

A. Yes, sir.

272 Mr. REDDY: We offer the map in evidence.

(Map marked "Complainant's Exhibit No. 1.")

Q. To what scale is the map drawn?

A. A scale of ten feet to one inch.

Q. Please give a complete explanation of that map, indicating the meaning of each mark on its lines.

A. Beginning with this point on the lower right-hand corner of the map, I have a tunnel which is marked "point of location." There are also three other tunnels, which are marked on the map.

Q. Describe everything that is there; what the different colors mean, and what each line means.

A. This tunnel which is marked "point of location," the mouth of it is the mouth of the tunnel, and at a distance of about seven feet from the mouth of the tunnel, indicated by heavier lines, is a hole sunk seven feet, marked by letters on the map. At the top of this hole a streak of what was said to be ore extends across the tunnel.

Q. You found it on either side of the opening?

A. Yes; that is shaded red and marked in red letters "ore." This ore does not extend to the bottom of the hole; it pinches out before it reaches the bottom of the hole, seven feet deep. Just beyond this hole is shown a branch running off from the tunnel some eight or ten feet long; that finishes with the point of location. Besides this tunnel, which is not colored on the map, there are

273 three other tunnels, uncolored on the map, marked "tunnel A," "tunnel B," and "tunnel C." Those short tunnels are in the nature of cross-cuts upon the ledge, as I was informed by Mr. Coffin; I forget who else; some other man that was there. The next

tunnel, which is marked "Stirling tunnel" on the map and shaded in purple, was the main tunnel of the mine; it runs in a northerly direction, and at a distance of 130 or 140 feet there are branches running easterly and westerly, marked on the map "easterly branch of the main tunnel" and "westerly branch of the main tunnel." At a distance in of about sixty feet from the main tunnel in the easterly branch winze No. 1 starts down. This is marked upon the map by the word "down," and the incline is shown by black shading, and at the bottom of the incline there is a cross made and the word "up" placed to indicate the bottom of the incline. From this incline, winze No. 1, levels start off below the main tunnel, one of these levels being a vertical distance below the main tunnel of 38 feet. It is marked on the map as the "38-foot level," and is shaded red. Another of those levels starts from the bottom of the incline at a distance of eighty-two feet, vertical, below the main starting tunnel, and is marked "eighty-two-foot level" on the map, and is shaded green. Proceeding along the easterly branch of the tunnel about thirty feet from winze No. 1 we reach winze No. 2. This winze is also an incline winze, inclining to the south as it goes downward. The top of it is marked by the word "down"
274 on the map; the bottom of it by the word "up." The incline portion is shaded black on the map and marked "incline." The 38-foot level before mentioned connects with this winze No. 2; then the 82-foot level also connects with winze No. 2, shaded green, as before mentioned. Intermediate between the 38-foot level and the 82-foot level is the 55-foot level, shaded yellow on the map and marked "55-foot level." This 55-foot level opens out to the eastward of incline No. 2 into a chamber about 15 feet long by 8 feet wide. In the southeast corner of this chamber, on the 55-foot level, is a hole, marked by a square on the map with two lines drawn diagonally across the square. Besides this chamber on the 55-foot level there is a drift shown extending in a northwestly direction from the incline. I do not know of anything else.

Q. Those other lines on the other side of the main tunnel—what is the main tunnel marked?

A. Stirling mine.

Q. That is marked "A" at the mouth?

A. It is marked "mouth" at the mouth.

Q. There are some figures on either side of the main tunnel. What do they represent?

A. I spoke of those before as being tunnels "A," "B," and "C;" said to be cross-cuts upon the ledge.

Q. Upon the surface?

A. Upon the surface.

Q. Open cuts?

A. Yes, sir; partly so, partly tunnel.

Q. If I understand you right, in order to reach what is
275 marked there as the "ore chamber" you would go in through the Stirling tunnel to the east branch?

A. Yes, sir.

Q. Follow the east branch to what winze?

A. Winze No. 2.
Q. Then down winze No. 2?
A. Yes, sir.
Q. How far?
A. To the 55-foot level, which is 55 feet vertical below the tunnel.
Q. Would that take you to the bottom of that chamber or take you to its apex or top?
A. It would take you to about the bottom; it would take you to the floor of the tunnel.
Q. Now, as I understand you, that chamber is about 16 or 15 feet in length?
A. Yes, sir.
Q. And about eight feet wide. Is that uniform up and down, or is it smaller at the top and gradually widening as it goes down? In other words, what is the width of the chamber across the roof?
A. The roof of the chamber forms a rude arch, springing from the floor of the chamber. I have given the measurements of the floor.
Q. About eight or nine feet wide in the bottom?
A. Yes; and fifteen feet long.
Q. How wide is it at the top, at the roof?
A. It is a sort of semi-circle.
Q. Drawing a line at the base of the arch?
276 A. The base of the arch is the floor.
Q. I mean the immediate base of the arch. For instance, this ceiling rests on the upper part of the wall.
A. It is probably five or six feet.
Q. I wish you would be exact about that.
A. I cannot be exact because I do not know.
Q. I will leave that branch until I show you your model. You will know that.
A. I may, possibly. As to the actual width of the roof I could not say, because we measured it always on the floor.
Q. When I said the base of the arch I did not mean the foundation of the whole structure. I meant where the arch begins.
A. I should say that a uniform section, or nearly uniform, of 8 by 15, and from that up it curved up, as tunnels usually do.
Q. Gradually growing smaller as you go up?
A. Yes, sir.
Q. When did you draw that map and when did you make the survey?
A. About two years ago.
Q. Could you tell the month?
A. I believe it was in June—that is, this present month.
Q. What year?
A. 1884. I am not positive as to that, but that is my impression; it is about two years ago.
Q. Was that chamber opened? Was there any dirt or waste
277 on the bottom of that chamber to prevent you determining what the bottom was?

A. Now, that you speak of the bottom, the bottom was not a perfect level.

Q. Could you determine of what rock the bottom was composed?

(Objected to by counsel for respondent on the ground that no foundation has been laid to show that the witness is an expert concerning rocks and ores; that the evidence is irrelevant, immaterial, and incompetent, and does not tend to prove any issue in this case, and does not tend to show what the chamber was at the time of the sale of the mine, nor does it appear that the witness knew what the shape of the chamber was, of what it was composed, or how it looked at the time of the purchase by the Southern Development Company.

A. The bottom of the chamber was, at the time of my visit, of solid rock. What the nature of that rock was I did not examine.

Q. Did you notice the rock in the Stirling tunnel at the sides?

(Same objections by counsel for respondent.)

A. No, sir.

Q. Could you tell whether it was lime rock or granite?

(Same objections by counsel for respondent.)

A. My impression was it was lime rock, but I made no ex-
278 amination for that purpose.

Q. You have had a good deal of experience in mines?

A. Yes, sir.

Q. And have had some experience in testing and determining one character of rock from another? You have learned, in other words, the difference between limestone and granite?

A. Yes, sir.

Q. And you know the difference between limestone and argentiferous galena and ores of that character—carbonate ores?

A. Yes, sir.

Q. You have learned that in your mining experience?

A. Yes, sir.

A. I will ask you, Mr. Wrinkle, whether there is not a winze sunk down from the bottom of the chamber to connect with the lower level which you have described there as being shaded in green?

Mr. MINER: It is understood that the same objections are made to all these questions on the ground that the witness has not shown that he knows anything about ores or rocks, and the evidence is incompetent, immaterial, and irrelevant, and on the further ground that all the questions are leading. The witness has not shown that he knows anything at all on the subject of ores or formations, and is not an expert on the subject.

A. Yes; that is the winze marked "hole" in the southeast corner of the chamber which I have already described. In describ-
279 ing the 55-foot level I forgot to mention that this hole connects with the 82-foot level, marked in green.

A. Does that tunnel run beneath the ore chamber?

A. Yes, sir.

Q. The drift marked in green runs beneath the ore chamber?
A. A portion of it.
Q. That drift must necessarily cut the rock underlying the ore chamber?

(Objected to by counsel for respondent, and the question is withdrawn.)

Q. State whether the drift marked in green would cut through the rock underlying the ore chamber.
A. The drifts shaded green would undoubtedly cut the portion of rock that lies vertically below the ore chamber. The distance between the two levels is only thirty-seven feet.
Q. Again, if the bottom of the ore chamber was composed of ore and extended down thirty-seven feet, would it or not have been cut by the drift shaded in green?
A. If the ore extended down vertically it would.
Q. If it extended down in accordance with the dip of the wall, as indicated in the ore chamber?

(Objected to by counsel for respondent on the ground that the question assumes that there is ore dipping in the ore chamber, and that it does not appear from the evidence of the witness that he knows anything about any ore dipping in the ore chamber,
280 and that the witness is not competent to testify about any ores and walls, and that it is incompetent, irrelevant, and immaterial.)

A. In this chamber there was pointed out to me a certain formation said to be ore. I do not wish to state that I know anything as to my own knowledge as to whether it was ore or not, because I never had it tested.
281 Q. I am speaking about the floor. If the bottom of the winze was composed of ore and that ore extended down as deep as that drift shaded in green the drift would necessarily cut that ore?
A. That is, if it went down vertically; if it went down with a dip in a northerly direction it might not.
Q. It might not?
A. No.
Q. How could it escape? I am speaking now about the dip as ascertained in the ore chamber.

(Objected to by counsel for the defendant upon the ground that it does not appear that the witness knows whether there is a dip or no dip, and he is not competent to testify as to the dip of ore bodies, and it does not appear by his evidence that he was acquainted with ore bodies or with dips, angles, and spurs of the same, and that the same evidence is immaterial, incompetent, and irrelevant.)

A. The truth of the matter is, the ore pinches out before it reaches there, and it is plain to be seen in the chamber that it does pinch out; consequently there is no dip about it, and I cannot answer the question. There is nothing to show any dip of the ore there.

Q. You misunderstand me. I am simply asking you about the chamber. What is the dip or inclination of the walls of the chamber; are they perpendicular, or how?

A. The floor of the chamber is the wall. The sides of the chamber dip this way. That is the floor; it dips that way (pointing).

282 Q. At what angle?

A. I do not remember exactly what the angle was; I should judge somewhere about forty-five or fifty degrees; the other is nearly vertical.

Q. Which other?

A. The other wall of the chamber; so that the whole thing is wedge-shaped.

Q. So that it ends there. That is the end of that chamber?

A. That is the end of those walls.

Q. And that is why you say there is no dip to go on, because it ends right there?

A. Yes.

Q. Mr. Wrinkle, what is the article which I now hand you, if you know?

A. This is intended as a model of the chamber of the fifty-five-foot level and of a portion of the winze No. 2, which connects with it as far up as the thirty-eight-foot level. This winze No. 2 is marked in pencil on the model as winze No. 2, and the thirty-eight-foot level, which leads off from it, is also marked in pencil on the model the thirty-eight-foot level, and just below the thirty-eight-foot level is shown this chamber.

Q. The ore chamber?

A. Yes; the chamber on the fifty-five-foot level. In order to explain the model it will be necessary to open it.

Q. Very well.

A. It is placed now in the same position as the map, and, on opening the winze, on the westerly side of this winze No. 2 the ore streak is shaded in red on the model.

283 (Objected to by counsel for the respondent on the ground that is does not appear that the witness knows what ore is, and on the further ground that he is not testifying of his own knowledge as to what ore is, but apparently from what others told him, and it is immaterial, irrelevant, and incompetent.)

A. The ore, as it appeared on the sides of the chamber, is shaded red in the interior of this model. There are three or four pins stuck through the model in different directions, which indicate drill holes alleged to have been made in the ore. At the time of my visit to the mine work had been done on this ore chamber, but this model is made with a view of showing the condition of the chamber at the time of its purchase by the Southern Development Company, as the condition of the chamber had been altered by working in it at the time of my visit. Mr. Coffin and two of the miners who were working the mine, and, I believe, Mr. Price also. No two of the miners who knew of the condition of the chamber before these alterations

were made knew of its condition at the time of its purchase by the Southern Development Company. I had them set up strings in different directions to indicate what the dimensions of the chamber were at that time, and from those strings and from their statements I made the measurements then, and constructed the model which, to the best of their knowledge and belief, shows the condition of the chamber at the time the Southern Development Company took possession, with this exception, that in the bottom of it at that time was a large quantity of loose ore covering the bottom, and to bring this model as near as possible to the exact shape which the chamber occupied at the time the Southern Development Company — it would be necessary to fill this model up with sand to a certain depth.

284 (Counsel for the respondent moves to strike out all the evidence of the witness in regard to this model and all he has testified to in regard to there being ore in the chamber as irrelevant and incompetent.)

Q. Up to what point should the ore chamber as represented there by the model he filled in order to make it represent the condition of the chamber at the time the Southern Development Company took possession of the mine?

A. According to the statements of those men?

Q. Of course on the basis that you built it on.

A. Yes.

(Counsel for the respondent moves to strike out the testimony on the ground that the witness says it is the statement of other parties, — on the ground *and* is hearsay.)

Mr. REDDY: We intend to show by the same witness on whose statement we base the model that that was the actual condition of affairs.

A. If you put in a sufficient amount of sand in this model in the ore chamber to entirely cover the bottom, fill the hole in the southeast corner, and show a continous body of ore, as indicated by the red shading on the model on both walls of the chamber, the northerly and southerly wall, there will then be a sufficient amount to cause it to represent the condition of the chamber at the time of the purchase by the Southern Development Company, as alleged by those men who assisted me in making the measurements to make this model.

Q. And without the sand and as it now stands, what does it represent?

285 A. It represents the condition of the chamber after removing this loose ore and loose rock, showing a formation in the bottom which is not ore—barren rock in the bottom. I am not stating of my own knowledge that this red was ore. I will certainly say that the other is barren rock. Any one can tell barren rock, but you cannot tell whether it is ore until you test it. It may look like ore and still not be ore. It may not assay enough.

Q. Now, in the hole that is marked near the end and from the floor or bottom of the ore chamber, did you look down into that to see what the sides were composed of?

A. Yes.

Q. What kind of rock was that?

A. Barren rock.

Q. Right down through to the other levels?

A. I only examined it to the depth to which it was cut out square. That was the portion, as shown on the model, which was excavated by Silva or his grantors.

Q. Now, what is marked on this model as the thirty-eight-foot level—there is a winze going down from that thirty-eight-foot level?

A. That is winze No. 2.

Q. In that winze as represented by this model there are red streaks and spots, as I will call them. What are they intended to indicate?

A. The formation of what is said to be ore.

Q. Do you find all of the pins here indicating the drill holes in the ore chamber?

286 A. As to the drill holes the other men can testify better than I can. I have only seen two drill holes myself.

Q. You pinned only those that you saw?

A. The others were worked out. These men will testify afterwards as to the drill holes. Some of those drill holes were worked out when I was there. I myself only saw this one that is marked "Wrinkles drill hole" in pencil.

Q. Is there a pin there?

A. No; the pin is lost. I will put one in.

Q. How deep was that hole?

A. I could not say. It was less than a foot at the time I was there. A large portion of it had been carried away, so they said.

Q. The other drill hole that you saw, how deep was that?

A. That was in the eighty-two-foot level, nearly south of winze No. 1. In the drift that runs from the bottom of winze No. 1 southerly on the eighty-two-foot level in the face of said drift was a drill hole about a foot deep.

(Counsel for the respondent moves to strike out the evidence about the drill hole in the eighty-two-foot level as not being embraced within the pleadings, and as irrelevant and immaterial.)

Q. What was the depth of the other hole that you saw?

A. The other hole was the one that was marked on the model.

Q. I mean down there.

A. That is the second drill. The one on the sides is drill hole No. 1. This is drill hole No. 2.

Q. How deep was that drill hole No. 2?

287 A. Probably ten inches or a foot.

Q. Is that what is represented to be ore?

A. It started in what is called a streak of ore, but one of the men threw the light of the candle in, and I could see the bottom of the

drill hole. It was white, which would indicate that it was limestone; that is all I know about it.

Q. Did you observe what the country rock was in that region?

A. All of the vein rock that I saw other than the ore was white limestone. I do not know whether that is country rock or whether that is part of the vein.

Q. State whether the ore chamber as indicated there by the model is a correct representation of the ore chamber so far as shape is concerned.

A. Yes.

Q. It correctly represents the shape of the ore chamber?

A. Yes; this is drawn on the scale of three feet to the inch, and shows the shape of the ore chamber and the dip of the sides or the walls, if you choose to call them so. They are really not walls at all, but simply a deposit. It has no regular walls about it. It is just a deposit.

Q. What is the distance from the tunnel level up to the surface?

A. Which tunnel, the Sterling tunnel?

Q. Yes, from the level of the tunnel. Take it at the east branch.

A. That I could not say; I do not know.

Q. Can you give me any idea of the distance?

A. I have no idea.

288 Q. Could you come within a hundred feet of it?

A. I know nothing about it. I took no observation to determine that at all. I should say that it was less than a hundred feet myself, but I did not take any measurements. Some of them that have been working there can tell. I understand you to ask: At the fifty-five-foot level what would be the distance of the tunnel—that is, this purple one, from the surface in a vertical line?

Q. Yes.

A. That I do not know anything about.

Q. You would say less than a hundred feet?

A. Yes; but I paid no special attention to it at all.

Q. Are the various drill holes which you saw marked in the chamber in the map as well as on the model?

A. Yes; the hole that is marked "Wrinkle's drill hole" on the model is marked also on the map, in red letters, "Drill hole," and there are five other drill holes marked on the map in pencil.

Q. By whom were those marked, by yourself?

A. If I remember right, they were put down by me on the map, but on the statements of some others, on the preliminary examination.

Mr. REDDY: I will now offer the model in evidence.

(Model marked Complainant's Exhibit No. 2.)

(Counsel for the respondent objects to the introduction of the model on the ground that it is shown by the witness' testimony

289 that it has been constructed almost wholly upon the statements of others; that it is deceptive and misleading; that the model has a roof upon it; that the witness has never testified to the height of the roof of the ore chamber from the bottom

to the roof, but has yet constructed a model with a roof upon it purporting to represent the roof of the ore chamber; that the evidence of the witness shows that he does not know the width of the top of the ore chamber, and yet the model purports to represent the comparative width of the ore chamber and purports to represent the chamber as the witness saw it; that the evidence is hearsay and incompetent; further, that the model does not, according to the testimony of the witness, appear to have been constructed according to any measurements, plans, or scales, is guess-work, constructed solely upon the statement of interested parties, witnesses for the plaintiff in this action, and is totally incompetent, immaterial, and irrelevant, and is based on hearsay evidence.

(A recess was here taken until to-morrow morning at 10 o'clock.)

290 TUESDAY, *June* 8, 1886.

(Counsel and parties present pursuant to adjournment.)

LAURENCE F. J. WRINKLE recalled for complainant.

Mr. REDDY:

Q. Do you now remember what month and year it was that you made the model and map about which you have been testifying?
A. In June, 1884.

Cross-examination by Mr. MINER:

Q. What was the height of the ore chamber in the 55-foot level when you made your survey?
A. As to the exact height I am unable to tell you. It was at that time fully high enough for a person to stand erect in it—that is, when it was in the condition shown by this model. I would like to state, with reference to the model——
Q. I will get to that afterwards. What was the width of the ore chamber?
A. The width of the ore chamber was, in its widest part, as shown on the map here, at that time.
Q. The width from north to south—that is what I call the width?
A. Yes; that is about eight feet.
Q. What was its length from east to west?
A. About fifteen feet.
291 Q. You spoke about its being wedge shaped, the floor being one wall and the side being the other; which side do you refer to as being vertical?
A. The northerly side was vertical or nearly so—that is, this side, and the southerly side had a dip to the north, substantially as shown by the model. I could not show it on the map. That was one special reason for making the model, in order to show it.
Q. As you understood it, the southerly side dipped north and the north side was vertical?
A. Nearly vertical.

Q. Are not you mistaken about that?

A. No, sir.

Q. Do not the winzes go right straight down?

A. The winze No. 2 starts at the main tunnel and goes down on a steep incline to the 55-foot level and on a little ways beyond the 55-foot level; then it goes right down vertically to the 82-foot level, as the model shows. Here, from the 38-foot level, the winze has a straight dip towards the south. A little ways below the level of this chamber the winze goes down vertical to the 82-foot level, and it is shown also on the map. It is shown as an incline from the main tunnel to the 82-foot level, and then a cross is made in a square, two diagonals drawn across a square, which shows where the top of the vertical portion begins and continues on vertical to the 82-foot level.

Q. Did you take the angle of the winze?

292 A. I think I did not take the angle. I think I measured it down by offsets.

Q. Plumb-bob and instruments?

A. If I remember right, I did not take the actual dip of the winze. It is very steep, but measured down by offsets; measured off so much horizontal and plumbed down, and measured till it struck the bottom of the winze, and measured horizontal until it struck the roof of the winze, and measured vertical until it struck the bottom, and so on.

Q. Is this model constructed from actual measurements and on a scale?

A. It is constructed from actual measurements taken in the mine and to a scale of three feet to an inch, with this exception—that the main object in view at the time I made the survey was to show the condition of the sides and the bottom. On the sides the ore was apparent and the bottom had this dip that I speak of and contained this hole in the southeast corner, and the main object was to show that. I paid but little attention to the roof, and the roof may possibly be a little higher or a little lower than I have it on the model, the object in view being to show the sides and bottom. The roof cuts no special figure in the case.

Q. I would like to have you mark north, south, east, and west on the model.

(The witness does as requested.)

293 Q. Now, is there a connection between the 55-foot level and the 38-foot level in the Stirling mine?

A. Yes, sir.

Q. Is that designated on the map?

A. The connection that I speak of or have in view at this time is, first, the connection by proceeding from the 55-foot level, up winze No. 2, to the 38-foot level, and I think there is also another connection in the northwest corner of the 55-foot level up through a hole. If I remember right, that goes up through the 38-foot level, but I am not absolutely certain.

Q. Will you mark that on the model where it comes up, and designate it on the map?

A. That is a point marked "hole" on the map. That would be about the place, but I do not remember exactly about that. Mr. Coffin can tell you, probably, about that; still, it was about this corner. There was an upraise here and I think it went up to the 38-foot level. There is some sort of an upraise there, and I think I walked up through it.

Q. Did you measure the distance between the two winzes—that is, what is the distance between two parallel lines through the bottom of winze No. 1 and winze No. 2, east and west?

A. I can ascertain from the map by drawing such lines.

Q. Will you find out from the map, then?

A. Let me understand exactly your question. Do you
294 want the distance from this point to that point—that is, from the bottom of winze No. 1 to the bottom of winze No. 2?

Q. That is the distance. I want to know the width of the ground intervening between the bottom of the two winzes.

A. The actual distance in a straight line from the bottom of winze No. 1 to the bottom of winze No. 2 is fifty feet, but that line would not have an easterly and westerly direction. It would be nearly north and south.

Q. What is the distance between two parallel lines drawn, one in an easterly and westerly direction through the bottom of winze No. 2, and the other drawn in an easterly and westerly direction through the bottom of winze No. 1?

A. I have now drawn a line running east from the bottom of winze No. 2 and a line running east from the bottom of winze No. 1; the distance between those two lines is fifty feet.

Q. Is this the first time you ever measured to find out that distance between those two winzes?

A. Yes; that is on the map.

Q. I will now ask you if there is a cross-cut or a drift running north and south through that space of fifty feet?

A. There is a drift running through the space designated, but it does not run exactly north and south.

Q. What is that drift?

295 A. The drift is the 82-foot level, colored green on the map.

Q. I will ask you if that is the only drift or piece of work which explores that space?

A. Well, at the bottom of the winze that is the only drift that I have any knowledge of.

Q. I will ask you if there are any works to explore the space lying between two vertical lines, one passing through the 82-foot level, and the other passing through the 55-foot level—the ore chamber? Is there any work to develop the space of territory embraced between those two vertical planes?

A. No, sir; not that I know of.

Q. Does anybody, then, on earth, know what there is in that space embraced between two vertical planes and extending down indefinitely?

A. I do not know.

296 Q. You do know that there is some ore on the side of the ore chamber which would be on the side of one of those vertical planes?

A. Yes; there was some ore at that time.

Q. Do you know how far that ore extended in a northerly direction or in a southerly direction or in an easterly direction or a westerly direction into the ground?

A. Only from information.

Q. Did you know at that time?

A. Yes; from information.

Q. I do not believe you understand the question. You saw some ore on the side of this chamber?

A. Yes.

Q. I asked you if you knew how far that went into the ground one way or the other?

A. Yes; from information. They have some drill holes.

Q. That is not what I am asking; I am asking you if you know. We do not know what people tell us.

A. I am answering the question as near as I can.

Q. I did not ask you if you heard; I asked you if you knew.

A. I stated only from information.

Q. What were you informed, then?

A. On the northerly side they pointed to a little streak of ore, and they said it was a mere shell; that they had drilled holes which ran through to the wall.

Q. Who said that?

A. The men that helped me. Mr. Coffin was one, and, I think, Chalmers was the name of the other.

Q. Men in the employ of the Southern Development Company?

A. Yes; miners.

297 Q. Supposing those holes had been dug out and the ore had been removed to an extent beyond the distance that the drill holes reached, and there was still ore; those holes, then, would not explore its extent?

A. On that supposition I do not think it would.

Q. Do you know how that chamber looks at the present time?

A. No.

Q. You do not know anything about it?

A. No.

Q. Do you know what ore is when you see it?

A. I could not tell ore when I see it without having it assayed. I might consider it contained mineral, but I could not tell whether it was valuable ore or not without having it assayed.

Q. I will ask you if this upraise from the eighty-two-foot level comes up into the fifty-five-foot level in a slanting direction. You can describe how it does come.

A. As we have said nothing about an upraise from the eighty-two-foot level heretofore, I would say that this excavation which is marked "hole" in the southeast corner of the chamber went down vertically for a distance of probably three or four feet; that, as I was informed, was the old work done by the predecessors of the

Southern Development Company, and they afterwards either raised or sank so as to connect the bottom of this hole with the eighty-two-foot level by an incline digging.

Q. Did that go straight down or in a slanting direction?

A. I have just said by an incline digging.

Q. Which way?

A. To the southeast.

Q. From the ore chamber?

A. Yes.

298 Q. Did you measure the depth of the excavation in the southeast corner of the ore chamber marked "hole?"

A. I stood in the bottom of the old excavation, and I estimated the depth to be between three and four feet.

Q. At the time of your visit to the mine was there not a pile of waste or earth resting upon the floor of the ore chamber and covering nearly the whole of it and being several feet in depth?

A. No.

Q. Was it not piled up in the northwest corner?

A. There may have been a little dirt there, but that does not cover the floor by any means. There may have been a ton or so of rock there. I could not say positively, but there may have been.

Q. Did not this waste earth cover a considerable portion of the bottom of the chamber?

A. Well, there may have been some little dirt on it along down, and along here a little scattering dirt, but not enough to prevent you from seeing the solid ground.

Q. Was not this waste bulkheaded?

A. I did not see any bulkhead.

Redirect examination by Mr. REDDY:

Q. In what sort of rock was the eighty-two-foot level run in?

(Objected to by counsel for the respondent on the ground that the witness is not an expert and not competent to testify; no foundation has been laid showing he is acquainted with the character of the rock. The question is therefore incompetent.)

A. I do not know.

299 Q. Do you know whether it was in lime rock or granite or ore?

A. I am certain it was not in ore, but as to what the character of the rock was I paid but very little attention.

Q. What was the color of it?

A. Whitish sort of rock. I did pay any attention to it. My impression was it was limestone—like the rest of the rock there. I did not go there to examine the rock.

Q. What was the course of the vein which appeared at the place marked on the map as the point of location?

(Counsel for respondent objects to the question on the ground that it does not appear that the witness knows what a vein is or knows

anything about the course of the veins. No foundation has been laid for the question, and it is incompetent.)

A. The course of this ore streak was easterly and westerly. The general course of the vein was easterly and westerly.

Q. Was it standing vertical, or did it have a dip—the ore streak?

A. I do not remember.

Q. You do not remember whether it was vertical or inclined?

A. No; I think it had a slight dip, but very nearly vertical; still I could not say now; it is two years ago. I would like to say this: The map shows the largest dimension of the chamber in plan at the time I made my visit to the mine, in 1884. The model shows the size of the chamber and form, as far as regards sides and bottom, at the time the Southern Development Company acquired possession, as pointed out to me by sticking up stakes and stretching
300 lines by Mr. Coffin and the two miners, Mr. Chalmers and Mr. Flannigan. To prevent misconception, if you measured this, I want to set that down.

Q. There seems to be an opening in the roof of that model. Was there any opening in the roof of the ore chamber like that?

A. No; that is merely put in to facilitate inspection of the interior.

Q. The model, then, is intended to represent the condition of things at the time the Southern Development Company took possession?

A. Yes; in its present condition, without the addition of the sand, it does not do so.

Q. I understand that. You explained that in your former testimony?

A. Yes.

Q. By filling that model, now, with sand up to the red lines marked on the inside it will represent the condition of the ore chamber and what it purports to represent at the time when the Southern Development Company took possession of the mine?

A. Yes.

Q. And by pouring the sand out it will show the condition of the ore chamber after it was cleaned out by the Southern Development Company?

A. Yes.

Q. The waste cleaned out of the bottom of the chamber?

A. Yes.

(Signed) LAWRENCE F. J. WRINKLE.

301 H. M. YERINGTON, a witness called on behalf of complainant, sworn:

Mr. REDDY: State your name, age, place of residence, and occupation.

A. My age is 56; residence, Carson; occupation, railroad man.

Q. Do you know of a company called the Southern Development Company of Nevada?

A. Yes, sir.
Q. Have you any business relations with that company?
A. Yes, sir.
Q. What was the business?
A. I was president of the company.
Q. When did you become president of the company?
A. At its formation.
Q. Were you a director of that company?
A. Yes, sir.
Q. One of the incorporators?
A. I think so.
Q. Look at the paper which I now hand you and see if that is the incorporation to which you refer.
A. This is a certified copy, I believe, of the incorporation.

Mr. REDDY: We offer this certificate and articles of incorporation.

(Marked "Complainant's Exhibit 3.")

Q. In what year and at what time did you become president of the incorporation named?

302 A. The 6th day of October, 1881, was the date of the incorporation. This was filed by the clerk of the court on the 8th day of October, 1881.

Q. When did you become president?
A. At that time.
Q. It would be after that?
A. Immediately after the incorporation; a few days after; the whole business was done right along; immediately.

Mr. REDDY: In order to avoid the necessity of putting in evidence and in order to save time I will ask you to admit, Mr. Miner, that the Southern Development Company mentioned in the certificate just put in evidence was duly incorporated under the laws of the State of Nevada at the time mentioned in said certificate and has ever since existed, and has transacted business as such corporation in the State of Nevada and also in the State of California, and that Mr. Yerington was its duly authorized managing agent and president at all the times mentioned in our second amended bill of complaint to this action.

Mr. MINER: I will admit all that.

Mr. REDDY: I will ask you to admit also that Frank Silva is a citizen of the United States and a citizen and resident of the State of California, and was so at all the times mentioned in the bill of complaint and at the time of filing the bill of complaint.

Mr. MINER: That I admit, and the answer does not deny it.

Mr. REDDY:

303 Q. Do you know a man by the name of Frank Silva, the respondent in this action?

A. Yes, sir.

Q. When did you first make his acquaintance in connection with any purchase you may have made from him of the Stirling mine?
A. I think it was in January, 1884.
Q. Do you know a mine in the New Coso mining district, Inyo county, California, called the Stirling mine?
A. Yes, sir.
Q. Did you, as the agent and for the Southern Development Company of Nevada, the plaintiff in this action, ever purchase this mine from Frank Silva?
A. I did.
Q. When was it?
A. February 15, 1884.
Q. Look at the paper which I now hand you and state whether you recognize it.
A. Yes; it is a deed from Frank Silva to the Southern Development Company of Nevada.

Mr. REDDY: We will offer the paper referred to by the witness in evidence.

(Marked "Complainant's Exhibit 4.")

Q. I will ask you if you recognize the paper now handed you?
A. I recognize it as a deed from Frank Silva to the Southern Development Company.

Mr. REDDY: We will offer it in evidence.

(Marked "Complainant's Exhibit 5.")

Q. The deed marked Exhibit 4 is a deed of the Stirling mine?
A. I believe so; yes.
Q. The mine in question in this litigation?
304 A. Yes, sir.
Q. And the deed marked Exhibit 5 is the deed of property other than the Stirling mine, and which has also been mentioned in the bill of complaint?
A. Yes, sir.
Q. I will ask you when you began to negotiate for the purchase of the Stirling mine, the property mentioned in Exhibit 4?
A. Well, the first I heard of this mine was in May, 1883, from a Mr. Eddy, a resident and merchant of Darwin. I met him at Lone Pine, and he told me about this property. The way it came out was I was down there on railroad business and was trying to find out the situation in regard to mining and other properties throughout that section of the country, and was making various inquiries about it. When I was in the town I met a friend of mine there, and he told me of a Mr. Eddy there who knew a good deal about these mines at Darwin, so he went down with me to a place and introduced me to Mr. Eddy. I had a talk with him. He explained to me that this was a very excellent mine, and I got certain details about it—about the quantity of ore that he considered was in the mine, which he estimated at about ten thousand tons, and the value of this ore he represented to me was some thirty-five ounces to the ton, and

some forty-five per cent. lead. There was plenty of wood and water, and it was a very desirable property. I was very glad to get this information, because various parties were out throughout
305 the country trying to get hold of good mines, and I could mention this fact to any party that I saw here. I had no idea of buying such property at all; no such thought entered my head at the time; but I was getting information for other parties, and was trying to find out all I could about the business of the country. We were running a railroad through there and I wanted to know. The thing ran along. I heard of this mine on several occasions afterwards. Notably I heard from Mr. Miller, a gentleman connected with the smelting works down near Oakland. He had been out to see it and was impressed with it. I met him at Darwin afterwards, when I was out there on business and was looking about the country to see how it looked and how it would pan out, and all that sort of thing, but without any notion or desire of buying any mines. We were not in that business. Finally he went to work to put up a furnace down at Elna, a station on our road in Inyo county. He owned a mine called the Montezima mine, adjacent to this station. This mine appeared to have low-grade ore, but there were very large quantities of it, he thought, and he wanted to get richer ores to mix with it, and talked with me about it. Of course, his interest was ours. I am speaking now as the president of this railroad.

Q. What railroad?

A. The Carson and Colorado—in the way of getting ores to
306 ship to Elna; ores to be smelted in these smelters, from which we get the bullion to ship over our road, and we would haul coke and other supplies to this furnace.

Q. Were you also president or managing agent of the Carson and Colorado?

A. I was president and managing agent of that road.

Q. And are still in that position.

A. Yes, sir. So, of course, in discussing this question with me I took a good deal of interest in it and aided him all I could, and any information I could get about mines or anything of that character in the country I told him or sent him word. Finally it ran along, and he went down and examined this mine himself and was favorably impressed with it, but he had not the money to buy it; so he came to me and discussed the question. Well, I did not know that I could do anything particularly in the matter. As I say, we were not buying mines. Finally I made up my mind—I think it was in January, 1884—to take a trip down through the country. I met Mr. Forman, a man that was known here as being an excellent mining man and understanding those things very thoroughly, and, in fact, was a good business man generally. I asked him if he would not go down through the country. He told me as soon as he could get his business arranged, in a few days, he would be very happy to go with me. I told him I did not know where we would bring out, but we would go down on this road and see what we could see. Finally we started. It was some

time early in January, 1884. We went down and saw the
307 country, heard people talk about the mine, went over to Candelaria and all the way along. Finally we arrived at Keeler, and then went over to Darwin. We got there early in the afternoon, and then went to the Defiance to examine that mine. We went to see the Independence and various other mines I had heard of but never been in. We could not get in. There was no one there to show us. We were afraid to go down the incline alone. We were going along and examining the country with spy-glasses and discussed it a good deal. I went over after we got back and got something to eat. Then I went to Eddy's store—I had met him before—and got talking with him. I asked him if Silva was there, and about this mine that he told me about the year before. He said he was there. I told him I had heard about this mine and did not know but what it would be a good idea to go and look at it. I did not know how Silva felt and did not know where he was. He told me Silva was in town and would probably be around by-and-by and I could see him. I said I would like to see him and walked off. A short time afterwards I meandered around the town, saw Silva, and was introduced to him. I think that was the first time I had met him. I had a talk with him about this mine. He spoke of it very highly and said he wanted to sell it. I told him I did not know but what we might go down and look at it before we went away.

I said to him, "I know a number of people have been down
308 examining the mine," and I knew it had been bonded; at least I heard so on several occasions. I said, "It is a great deal of trouble to you; if you do not want to go with me, all right." He said he would be glad to go down, and I said, "Like enough we might make a trade in some way." My idea was, if it turned out as he told me that possibly I might make some arrangement with Miller to let him have the ore at Elno. I did not expect, if I did carry this thing out, to make any profit out of the mine; that was not the idea. He said he would be glad to go down the next morning, I said, "Very well;" so we arranged it. I think I told him, "I want you to understand one thing, 'If I go down and talk about this mine at all there is no fancy price in it. I am not here to speculate in mines. I do not want to put up a dollar that I cannot get back. As far as making money is concerned, I do not care about that." I told the same thing to Eddy, so that he could say the same thing to Silva. The next morning we went with Mr. Forman down in a buggy. This man Silva went down on horseback. A little while afterwards Mr. Eddy came along on horseback. We four went down and examined the mine.

Q. What time was it when you reached the mine; what day was it?

A. I have got a little memorandum of it (referring to memorandum). I went down there on the 16th of January.

Q. Of what year?

309 A. 1884. The next morning, which would be the 17th, if my memory serves me, we went down there; we started pretty early in the morning.

Q. You reached the mine on the 17th?

A. Yes, sir; we got into Darwin on the 16th and started early the next morning; we got down there about 10 o'clock.

Q. When you say "we," who do you mean?

A. Mr. Forman and myself.

Q. Mr. Charles Forman and yourself?

A. Yes; and Silva on horseback. Half an hour or so afterwards Mr. Eddy came down following us.

Q. Down to the Stirling mine?

A. Yes, sir.

Q. How many persons were there there altogether during the time you were there?

A. Those four of us; no one else was there. It is my impression that Mr. Eddy was with us on that occasion.

Q. Who led the way; who started to show you the property?

A. We got there, took our horses out, and tied them to the wagon in the canyon. Mr. Silva went ahead and walked up onto a little dump that was up there to show us the mine. The first place we went to was this point marked on the map "point of location." We got up there and found a little excavation there several feet deep, running in—a little opening cut.

Q. Running into the side hill?

310 A. Yes; several feet deep. We walked in there and on the edges of this we saw galena and silver ore. We knew it was galena and supposed it was silver. The lead we knew, as a matter of fact.

Q. You supposed the lead contained silver?

A. Yes, sir; it seemed to be put right in on the ledge.

Q. Cross-cutting the ledge?

A. It went right down on the ledge and went in rather flat, but on the ledge. This mine was in a hill, and we were up possibly a quarter of the distance up the hill, and this ore ran around the hill towards the west.

Q. You mean the vein?

A. Yes; the cropping; the vein that showed ore, and to the extent of several hundred feet it showed right along. This point was probably the furthest point to the east which we were shown, and probably the most desirable. We walked into this little place and found he used it as a sort of kitchen and cooking place. He had a little fireplace and a pipe was put up a few feet to carry off the smoke. Around the fireplace and chimney we could see this galena ore. It was badly smoked, still the ore would show bright; it looked very nice. He told me that that was the point of discovery. I remember very well while we were talking there that the main drift—the tunnel—was pointed out as being to the left of us, pos-

311 sibly a hundred feet; I cannot remember exactly, but a number of feet, and a little down the hill below where this edge cropped I said, "This thing looks first rate right here. Why did you not go down on it?" He said, For mining purposes the tunnel, he believed, was the proper place. There were good dumping facilities and there was quite a deep ravine, which was

evidence that the debris from this tunnel could be thrown out very readily. I said no more. I am not positive whether we went first into the tunnel or whether we went around this hill on this ledge on which I tell you there were croppings out, on which he had several excavations, and which are shown on this map as "A," "B," and "C."

Q. I would like to have you finish your testimony as to what was said and what you saw at the point marked "point of location" before going to any other point.

A. When we went in there and looked around we could see that was the end of that excavation. There was no indication of any work being done of any kind or character—just this little fireplace—because there was no other work done there. That was the reason I asked him this question, why he did not go down right on that ore there and follow it down to see where it went to. So far as I could see, and from what he told me, there was no other work that was there at all but what we did see; that I am positive about.

Q. Now, I will ask you in what direction the cut was driven where the ground was open—in what direction did the cut run?

A. Right into the hill.

312 Q. With reference to the points of the compass?

A. It would be a northeasterly direction, I should think.

Q. On either side of that cut was there a streak of ore?

A. On the left-hand side. It seems that was out at the extreme end of that ore body.

Q. I want to get at what appeared in the cut; the cut went through a vein of ore?

A. It went down on a ravine.

Q. At what incline?

A. Well, it might have been at an angle of forty-five—somewhere there. I do not know just what that was. He seemed to have gone down and made a floor, so as to use this as a cooking place.

Q. What was the length of that cut?

A. My impression was, in the hill, it could not have been over eight feet. There was a little open cut before we got there—a sort of cutting the ground out to enable him to get to this point.

Q. How high was it from the floor to that cut to the surface?

A. I could walk in there without any difficulty. It might have been a foot or so higher than my head, possibly.

Q. Looking on the left-hand side as you go in, you saw ore?

A. The ore extended on the left-hand side.

313 Q. Did it extend from the floor to the surface, or as high up as you could see?

A. No, sir; I should think that ledge there was a couple or three feet thick at that point.

Q. Did the ore extend from the floor up to the surface. For instance, here is the floor; here is a mark, from there to the ceiling; did the ore extend from the floor up to the top of the surface of the ground?

A. Supposing this was the ledge, he commenced out here a little bit to cut in. In cutting in there was no ore under the ledge. He

went in under the ledge and cut in to make his floor, and then excavated right in the hill, and this ledge would be taken right through.

Q. I mean on the side; what appeared on the side?

A. On the left-hand side?

Q. That is what I am talking about. You say you did see ore on the left-hand side. Did that ore extend from the floor of this excavation up to the surface?

A. I think it did.

Q. State whether it appeared to extend down below the floor.

A. It looked to me as if it did.

Q. What was the width of that streak of ore?

A. Two feet wide, or possibly more. It was pretty hard to tell, because it was smoked so badly.

Q. Did any ore appear on the other side of the excavation?

A. On the right-hand side?

Q. Yes, sir.

A. Yes; on the fireplace side.

Q. Did that appear to extend up?

A. Yes, sir.

314 Q. What was its appearance with reference to extending downward?

A. It looked well.

Q. What was the character of that ore?

A. That ore was galena.

Q. The galena was suppesed to be the richer quality of ore?

A. That was supposed to be the richest ore in the mine at that time.

Q. As I understand you, you asked Silva why he did not sink down on that vein?

A. Yes, sir; why he did not go down and follow the ledge.

Q. His answer was he found it a better plan to work the mine down at the tunnel?

A. Yes; which was off to the left about a hundred or two hundred feet. I did not measure it. I am only guessing at it. It was quite a little distance off to the left.

Q. I understood you to say that was all the work that had been done at that point?

A. Yes, sir.

Q. And it appeared to be the case?

A. Yes, sir; there was every evidence of it, and nothing to show to the contrary.

Recess to two p. m.

315 *Afternoon Session.*

H. M. YERINGTON recalled for complainant.

Mr. REDDY:

Q. Did you visit any other point on the surface?

A. Yes, sir.

Q. What point? Indicate it in some way on the map.

A. I think the next point we went into was in this little cut here, marked "B."

Q. What was there, if anything?

A. If my memory serves me, this outcrop of ore run around the hill until it came to that point "B."

Q. What appeared there?

A. There was an open cut put into the side of the hill, and then it goes down on the ore—follows the ore down.

Q. How much ore was in sight; was it of any consequence?

A. Down through there it looked very well. I should think there was from a foot to two feet of ore that this incline showed as it went down. My impression now is it was down there in the neighborhood of thirty feet. I might say here that this open cut was of a similar character at the letter "A." I cannot remember which of those there was a hole put through and a connection made with this tunnel below—with the western branch of the tunnel.

316 Q. And the other place that is marked there?

A. Let us see. My impression is that that went down and connected with the ore that come down through here, and was shown above this winze.

Q. Above what winze—the tunnel level?

A. Yes; there was a winze here eighty feet deep.

Q. Which was the most important point for ore?

A. Below the letter "C," and between that and the east branch of the tunnel. There it showed a larger quantity of ore than any of these openings that we went into, but the ore here from these openings was richer—that is, at "B" and "A." That was more valuable than the ore at "C" and below it.

Q. Did you visit any other points on the surface?

A. I think we went around, where any work was done, to see how far this ore extended on the surface—this indication of ore. We examined the surface pretty thoroughly; then after that we went into the tunnel to examine the inner portion of the mine to see how the ore stood there. When we were going into this tunnel I saw no tools; I think I saw one powder keg—an old one. I saw from the formation that it did not require very much powder; I said that to Silva. He said the mine was of that character that it did not require but very little powder, which I could see was the fact. He told me the reason there were no tools in the mine was because he was not working the mine at this time. It was locked on the outside,

317 and it was liable to be broken open, and strangers coming around stealing his tools, and there were no tools in the mine. That was the reason he gave.

Q. State whether he informed you where the tools were that he had been using.

A. I do not think I asked him that question. I supposed he had put them in some place uptown.

Q. How far is the mine from Darwin?

A. Twelve miles.

Q. You may go on and describe the inside of the mine.

A. We went in, as I understood from him, about one hundred feet, and when we arrived at that point I saw two tunnels, one running to the right and the other to the left.

Q. As described on the map?

A. Described on the map as the eastern branch and the western branch.

Q. Of the Stirling tunnel?

A. Yes. Then before going into either of those I think we went clear back to the end of the main tunnel, called the Stirling tunnel on the map, and I understood from Silva it was four hundred feet. He told me the object of that was to run in and see if they could find any ore from the indication of croppings on the outside. That was immediately over this; immense large croppings; they looked like carbonate croppings—that is, a yellow character, that you
318 see for miles. After that we came back and we went into the westerly branch of the tunnel, and at the back end of it, at the face of that tunnel, we found some little galena ore in several places along that were indications of coming down from this ore that we saw on the surface. The pitch was right, and I believe that was the fact. Those indications amounted to nothing. From what I understood from him he had given up running it any further or attempting to do any more work there. We then came back to the mouth of the easterly branch and came on in that tunnel or branch fifty or sixty feet.

Q. State in what kind of rock was the Stirling tunnel driven.

A. It was largely lime.

Q. Was that the country rock?

A. It seemed to be the country rock.

Q. And how about the branch—say the western branch?

A. They were running in the same character of ground.

Q. And the eastern branch?

A. That was largely the same character.

Q. Up to what point?

A. To the end of it—to the face of the drift.

Q. Did you go below that level?

A. After we had gone into the eastern branch fifty or sixty feet, as I understood, I found a winze which Silva told me was eighty feet deep, about.

Q. How is that winze indicated on the map?

A. Winze No. 1. I do not think we went down that winze
319 at that time, but we then continued on in the easterly branch on the map I think about forty feet. There, on the right-hand side of that tunnel, we found another winze.

Q. How is that indicated?

A. That is indicated as winze No. 2. I may say here in regard to all those measurements I did not measure them, but they were given to me by Mr. Silva; I suppose as near correct as he could get it. It may be out a foot or two. We went down winze No. 2; I think it was about thirty-six feet, and there we found a landing from off the ladder. We went into this landing, and there we got into a drift that they call here on the map the 38-foot level. We went in

there, and my memory is that we found quite a large ledge in there, but a good deal of ore had been taken out; Mr. Silva told me about three hundred tons; he told me that the character of that ore would go about thirty ounces.

Q. In silver?

A. In silver. That drift called the 38-foot level extended around and ran into this winze No. 1. It cut that winze No. 1.

Q. Below the tunnel level?

A. Below the tunnel level. We examined that pretty closely; went all through; took some samples there, and then came back to winze No. 2. When I came back there I said to him, "Silva, I don't think this amounts to much. This does not look very big—this institution here." He said, "You wait until we get down a little further,
320 and I will show you something that will astonish you," something to that effect. I said, "All right," and down we went. I may say, when we came into the mouth of this winze from the tunnel level, we went down fifteen feet, about; then the winze began to come into galena ore, and all sides of that shaft, clear to the bottom, showed a great deal of galena and silver ore. It was very bright, and the candles shone very brightly on it and it looked fine. It improved as we went on until we got to the bottom of that winze, which he told me was 55 feet deep, about. Within about five or six feet of the bottom of that winze there was a landing, and that, if I understand it rightly, is the point here where the landing was.

Q. Would that be the place called the ore chamber on that map?

A. Yes; that would be the floor of the ore chamber.

Q. Look at Complainant's Exhibit No. 2 and state whether that exhibits the form of what is termed the ore chamber on the model.

A. It does, as far as I can remember.

Q. Could you see the floor or bottom of that chamber at that time?

A. When we stepped onto this landing it was in the shape of a—I do not know exactly what to call that—a sort of a wall that stood there, with a shaft on one side going down five or six feet, and the floor of the chamber two or three feet below on the other side. We stepped onto the top of that, which was ore.

321 Q. Loose ore?

A. No; hard ore. We stepped down then onto the floor of the ore chamber. There we found a chamber twelve or fourteen feet long at least running easterly and westerly, and it must have been seven or eight or nine running the other way, to the south.

Q. That is wide?

A. Yes; and standing in the centre there was a body of rich carbonate ore in the shape of a pyramid, and the ore apparently was running northerly and southerly. One end of it would have been in that winze No. 2, and the other end was against the wall apparently going north. I am not sure about these points of the compass. It is as near as I can figure it, as I had no compass there. In cutting out this winze and cutting out this little two or three feet depression to get to the floor of that chamber that ore was taken out. If that had not been done the ore would have been continuous

from and including the winze clear back to the wall at the north that I speak of. That would have been a distance of probably fifteen or sixteen feet, it seems to me, including all that I have spoken of. Now, this body of ore that stood in the chamber, this pyramid of ore, we paced that and found it was nine feet on the bottom; that was going easterly and westerly. Now, at the westerly end or side of that body of ore there was a hole drifted in going to-
322 wards the west, and it drew our attention to that as showing more ore inside, so we crept in there over another little bridge. That little bridge was a little higher than the floor. Then when we got in there we found a drift running north and south; that was six or seven feet high and went down, I think, northerly about twenty feet. The north side of that, my memory is, was lime. The south side of it was very rich ore. That was the ore that was next to the ore body that was in the chamber, and they were continuous, apparently, so that when we came to figure on this ore there looked to be a very large body of it; the top of this pyramid that I speak about——

Q. You mean now that there was a pyramid of ore, a pillar of ore, standing in that chamber?

A. Yes; standing in that chamber; and the top of the chamber had all been excavated out, and it looked as if this pyramid of ore had pinched out about at the roof of the chamber, and the top of this body or pyramid was probably four or five feet across. At the bottom, as I tell you, it was nine feet, and it was widening as it went down. The character of that ore was carbonate, apparently very rich in silver and lead. I know that we had a two-quart pail there, and Mr. Forman sampled it all around there. I was with him when it was done. I held the pail, and when I attempted to go out and up the ladder pretty nearly perpendicular it was very close work getting through. I took that pail in my hand and carried it
323 a little way, and the pail cut my hand, it was so heavy. It was extremely rich; there is no question about that; that seemed to be the character of the ore in that chamber and all around it and in the little cut to the north of it. We took our samples, examined them, and the whole thing looked well. While we were there Silva told me he used to work for me in 1866 on the Carson river at a quartz mine that I owned. For old acquaintance sake I was disposed to talk to him very confidentially about everything. Mr. Forman and myself discussed about this body of ore, of the probability of it going down, of its going down north in this wall, of the fine appearance of the winze coming down, of the fine appearance of this cut going north, and seemed to feel that everything was just exactly as it stood in appearance, in good shape there. After that Mr. Forman and myself went to the bottom of the winze.

Q. Which winze?

A. Winze No. 2, down there about five or six feet, and we found a little ore there, but we had no tools with us, that I remember. I do not remember that we had anything but a little prospecting pick that Mr. Forman had with him in his pocket. I think there was an old shovel that we used there, but I cannot quite remember; that is

what occurred when we were there. I may say again that while we were there discussing this—the quantity was discussed—Mr. Forman thought from these measurements and the way the thing stood and the quantity of ore in sight that there was, without a doubt,
324 five hundred tons of ore there, provided it was solid, as it looked from the outward appearance. This ore being carbonate and decomposed, something like a pile of wheat—I cannot liken it to anything else—it had run down onto the floor and covered it with ore. The floor was all covered with ore. How deep it was I do not know. Mr. Forman asked Silva about that floor; that was the time when we were figuring about the quantity, and my impression is that he told him that the floor itself was covered with ore. We could not get down to the solid floor, because this ore had fallen down.

Q. What did Mr. Forman say to Mr. Silva, if you remember?

A. He asked him if the floor of that chamber covered in the meantime with all this loose ore a foot or two was solid ore, because Silva knew it.

Q. What did Mr. Forman ask of Mr. Silva; what did he say to him?

A. He said to him, "Now, Silva, under this ore is this floor solid ore?" and he told him yes.

Q. State whether there was any comparison made as to the quality of the ore between the ore on the sides of the chamber and the ore that was said to exist in the bottom beneath the loose stuff.

A. I do not think so.

Q. State whether Mr. Silva said at any time during the conversation there that the bottom was composed of the same kind of ore that was found on the sides of the ore chamber.

A. I do not remember that.

325 Q. Now, go ahead.

A. After doing all these things, examining as we did and taking these samples, we came up the ladder. Then, I think, we went over through this easterly tunnel or branch to incline No. 1.

Q. Look on the map and see if you can find incline No. 1.

A. Yes; there is incline No. 1.

Q. Is that the way it is marked there?

A. No; "winze No. 1." We went down that winze, and there was no ore in the bottom of that at all. He had one or two little drifts off from that, and in one of those drifts he showed a little streak of ore that he thought might lead to something, but he could not tell about it; no one could tell.

Q. Was there anything else said while at or in the mine?

A. Then we discussed the question of the quantity of ore in the mine?

Q. Who discussed it?

A. Silva, Forman, and myself.

Q. Was it in the form of a discussion, or did Silva make any statement to you as to what the quantity was?

A. In discussing the quantity of ore he said, "You can rest assured that there are two thousand tons of ore in sight in this mine,"

and that arose from the fact that we had been all through the mine as far as we could go, and he went with us every time, and we went in, as we understood, to every opening and place.

Q. As he represented or as you understood?

326 A. As he represented to us and as we understood it. I understood from him, and he insisted on it, that there were two thousand tons of ore in sight. I differed with him. Taking the ore in that chamber, which was the big point so far as ore was concerned, and where the largest and best body of ore that we saw was to be found, I came to the conclusion that there could not be over a thousand tons of ore in sight; but he combatted that and insisted I was wrong. We discussed the quantity at different points, and figured it up to see which was right and which was wrong. I could not make out over a thousand tons. At the same time he insisted I was wrong in my judgment and figures, and that there were two thousand tons of ore in the mine.

Q. Did he say anything about its quality?

A. This ore down below, in that main chamber, was looked upon as being fifty ounces and probably sixty per cent. lead. The ore that was up in that drift, called here the 38-foot level, he told me that that would go thirty ounces of silver, and this ore that was up above this easterly branch of the tunnel, reaching to the surface and below this cut No. 6 on the map, would go about the same; that is what he told me.

Q. When you came out of this ore chamber which you have spoken of and went up to the surface, or at any point between those two places, was there anything said as to the quantity and quality of the ore—that is, were quality and quantity both spoken of there in the ore chamber you have spoken of?

A. Yes; he took the ground all the time there were 2,000 tons of ore in sight in the mine.

327 Q. I am speaking now about the ore chamber.

A. I understand.

Q. I want to know if there was any representation made to you by Silva as to the quantity of ore in sight in that ore chamber.

A. I do not remember anything about the quantity of ore in that ore chamber excepting the talk I had with Mr. Forman when Silva was there. We figured about five hundred tons in that chamber.

Q. Did Silva say anything about the number of tons?

A. No; he did not dissent; I am not sure that he agreed that that was the case. We three were there talking; I am not positive that he said either yes or no about that; I know that was the ground Mr. Forman and myself took, about that quantity. He was there at the time, and that was the way I figured it that there was 1,000 tons in the mine. My judgment is that Mr. Forman agreed with me about that.

Q. Do you know of anything that would refresh your memory on that question; did you make the complaint in this case?

A. Yes; I believe I did.

Q. Look at this second amended bill of complaint, paragraph six

and line twenty-one and following. (Handing the complaint to the witness.) Does that assist your memory in the matter?

A. I think that is correct.

Q. Was anything said by Mr. Silva, and, if so, what, concerning the quantity of ore in sight in what is designated on the map and model as ore chamber?

A. I am now satisfied that he took the ground there was at least five hundred tons of ore in that chamber in sight.

Q. Did he say so?

A. Yes; that was his opinion, and that is what he said.

328 Q. Now, I will ask you if at any time after having gone through the various places which you have described and through which you accompanied Mr. Silva did you or not inquire whether you had been shown all the works and excavations which had been made in and upon the mine?

A. There was one thing that I have not mentioned yet. When we were at the bottom of this eighty-foot winze No. 1—we went in there last—we went through all the drills and various places and only found ore in this one place I speak of, where there was some little ore apparently going up, and after we got through there we came out into the tunnel and got up into the main tunnel. I said, "Now, have you shown the whole of this mine." He said, "Yes; everything." I said, "Now we will get out and go home." He led me to understand we had seen everything there was about the mine.

Q. Did you at any time after that and before completing the purchase of the mine make any inquiry of Silva as to whether he had shown you all of the work that had been done in that mine?

A. Yes.

Q. State under what circumstances, and where and when?

A. On the day on which I took my deed and previous to it, and before I paid the money, in my office in Carson City I had a talk with him about the mine. He was sitting next to my desk. I said to him, "Now, Silva, I think I will take this mine for ten thousand dollars, and I want to know one thing before I close this with you. I want to know if you have done any work in that mine in any

329 way, shape, or manner around those ore bodies that you have not shown to me, or that you have not told me of, or that I am ignorant of." He said, "No, sir; I have not." Says I, "Are you sure of that?" He said, "Yes; I am positive." "Very well," I said, "then if that is the fact I will now close the bargain with you."

Q. We will come back to that again. Having examined the mine, what did you do next?

A. Mr. Forman and myself took our buggy and came on to Darwin.

Q. What time did you leave the mine; how long were you there examining it?

A. We must have been there altogether three or four hours. We came on down to Darwin, got something to eat, fed our team, and I went over then to Eddy's store and there I met Silva. I went into the back room alone with him. I said, "Silva, I have got these

samples and I am going back to test them. What will you take for the mine?" He said, "I have been asking fifteen thousand dollars for it." I said, "It is no use talking that to me." Finally he said, "I will take twelve thousand five hundred dollars." I said, "I will not give it; it is not worth it." I explained to him fully and at the mine why I wanted to buy that mine. I told him I wanted to buy that mine to deliver the ore at Keeler, at the railroad, which was thirty-six miles away, with teams. I then wanted to haul it to the Elno furnace on the railroad, and proposed to let Mr. W. P. Miller have it to work; that I did not expect to make a dollar out of the mine; that all there was in it was probably a couple of dollars for hauling over the railroad per ton for this sixty miles, which would be very cheap; that my principal object was to get this
330 ore for Miller's furnace, so that he could work those low-grade ores of his and then we would have the hauling of the bullion to the furnace and the coke and make business for the railroad." I said, "I do not calculate on more than one thousand tons of ore here. According to your statement about the value of this ore and what it has paid and all that sort of thing, if I can get thirty-two ounces of ore and forty-five per cent. lead and get one thousand tons I could probably give you ten thousand dollars for the mine." "No," he said; he would not take it at all. Said I, "That ends it, then, and I will go home." We had a little more conversation, and finally he said he had an abstract of title and I asked him if he would let me have that. He said, "Yes." I told him I would take it over and send it back again.

Q. It is unnecessary to go into that.

A. I am only telling you the conversation that occurred. He gave it to me. I then said, "Silva, it is going to take some days for me to get these assays and get home. Have you any objection to hold this matter as it is for a week?" He said, "No, he had none." So I went off with that understanding, came down to Keeler, and went home. I took half of the samples, had them assayed at the mint, and Mr. Forman took the other half to Virginia. My assays gave us thirty-three ounces and about fifty-six per cent. lead, and Mr. Forman sent me down his assays and they corresponded very closely; differed some, as they naturally would. After I got them I wrote out to him, Silva, and told him what these assays were.

Mr. MINER: I will put in that letter now, as I have got it here, in connection with the testimony of a witness.

331 Mr. REDDY: To which complainant does not object.

Mr. MINER: Is that the letter (handing)?

A. Yes.

The letter is marked "Respondent's Exhibit A," and is as follows:

"Carson and Colorado R. R. Co., General Superintendent's Office.

"CARSON CITY, NEV., *February 1st*, 1884.

"Frank Silva, Esq., Darwin, Inyo Co., Cal.

"DEAR SIR: After several long delays, which must have been wearying to you, owing of late to the records at Independence being

rather unsatisfactory in regard to the bond given Mr. Hamilton and the abstract of title you gave me not being certified to by the recorder, I have been obliged to send an agent down to examine them.

"I am now, for the first time, prepared to make you an offer for the 'Stirling mine,' which I will preface by saying that the best I can get from the assays from samples taken from the mine by Mr. Forman and myself shows 32 ounces silver and forty-five and a half per cent. lead per ton. These assays corroborate the ones taken last summer by Messrs. Bliss & Forman, and I am satisfied that they are about correct. They are lower than Professor Price's, taken a year ago, but he tells me that he considers them too high on the average quantity of ore shown in the mine, and in this I am convinced that he is right.

332 "Under this state of things, and with the fact that I am not trying to sell the mine, but intend to work it for the ore that's in it, and also that I cannot afford and do not intend to make a loss, I have concluded to make you a straight offer of ten thousand ($10,000.00) dollars cash for the Stirling mine property, which also includes the extension you have already made and the spring of water, about one and one-half miles distant. This is the best I can possibly do, and if you conclude to accept my proposition you can come in immediately to Carson, and as soon as the papers are drawn and executed I will pay you your money. To aid you in coming in I will have a pass left with R. R. agent at Hawley for you, good to Carson and return.

"If you do not accept this proposal please advise me immediately and I will return to you the deed, abstract of title, and certificate of location, which you gave me and are now in my possession.

"Hoping an early reply, I remain,

"Yours very truly,

"(Signed) H. M. YERINGTON.

"P. S.—I may add, for your further consideration, the fact, which you know as well as I do, that seldom or never does the ore in any mine work to the average of assays taken from samples. Therefore in making the offers that I have I feel certain that I have offered every dollar that the mine warrants me in doing.

"H. M. Y."

333 I wrote that letter, I think, about three weeks after I was out there, and made him a flat offer of ten thousand dollars for the mine, and told him if he wanted to accept it to come right out. This letter, I see, was written on the 1st of February and he came out a few days afterwards.

Q. Out where—to Carson?

A. Yes. After he got here we found out there was some trouble about a bond that he had given to sell this mine.

Q. You have got Silva to Carson. Before you start in to see what transpired here I will ask you if Mr. Forman communicated to you any conversation between himself and Silva and the representations made by Silva to him before he, Silva, came to Carson.

A. When we came out we of course discussed the mine, and Mr. Forman and I talked over this conversation that we had with Silva in regard to the quantity, and it was agreed and understood between us that Silva positively stated that there were two thousand tons of ore in the mine in sight, and we discussed about this ore body going down, and all that occurred in that ore chamber at the time he was talking to us.

Q. Give us Forman's representation to you as to what Silva said to him which you did not hear, if there was anything of that kind?

A. I do not think anything occurred between him and Silva at which I was not present.

Q. Now, complete your statement of the matter at Carson.

A. Then I went on after this conversation occurred with him about there being no work done or any secret work in the
334 mine, and I had seen everything done there. Mr. Ford, my clerk, brought the deed in.

Q. You agreed on a price of ten thousand dollars for the Stirling mine?

A. Yes, and he agreed to take it.

Q. For what property?

A. For the Stirling mine. During this time there was a talk about these springs.

Q. I will take that up in another connection.

A. The deed was drawn and Mr. Ford brought it in to me out of his office. Silva signed it in his presence. I then instructed Mr. Ford to draw a check for ten thousand dollars on — Bank — California, in Virginia City, in favor of Frank Silva, which he did, and handed me the check, and I signed it as president of the Southern Development Company.

Q. What was done about that check afterwards by you and Silva?

A. I then handed the check to Silva. He said to me after he got it, "By the way, I am not acquainted with these people down at Wells, Fargo & Co.; would you have any objection to go down with me; I want to arrange about this money." I said, "No; I have not." I went down with him and introduced him to Mr. Pierce.

Q. Who is he?

A. The agent of Wells-Fargo's bank here in Carson. I told him that Silva wanted to get this cashed. Then he explained to Pierce that he wanted twenty-five hundred in coin and a certificate of deposit for seventy-five hundred dollars, and the coin to be expressed to his address at Keeler. That is what I think he did. He
335 might have done it to Darwin. Any way, it was sent over the road, and, I think, to Keeler. He got the certificate of deposit. Then we came up the street together and talked about the mine, and so on. That ended that day's transactions. A few days afterwards I arranged to send Mr. Oliver.

Q. When you get through with the sale stop a moment; I want to bring everything up to that moment.

A. Well; that was the end of it.

Q. Did Mr. Silva deliver that check to Mr. Pierce?

A. Yes.

Q. Did you see the twenty-five hundred dollars paid to him or the check delivered?

A. I saw the certificate of deposit delivered to him; they arranged to send the twenty-five hundred dollars in coin by express.

Q. Do you know the terms of that certificate of deposit?

A. It was one of the usual forms of certificate.

Q. I can prove that by Mr. Pierce.

Mr. MINER: Here is almost a *fac simile* of it (handing a copy to Mr. Reddy).

Mr. REDDY: Can you put this in as a true copy of the certificate of deposit?

Mr. MINER: Yes.

Mr. REDDY: You offer this as a copy of the certificate of deposit?

Mr. MINER: I state that is an exact copy of the certificate given by Wells, Fargo & Co. to Frank Silva on that occasion.

The following is a copy of the certificate of deposit:

336 "*Certificate of Deposit.*

"No. 24425.

"[Seal Wells, Fargo & Co. Capital, 6,250,000 dollars.]

"WELLS, FARGO & CO.,
"CARSON CITY, NEV., *Feb'y* 1, 1884.

"Frank Silva has deposited with us seventy-five hundred dollars, payable to the order of himself on return of this certificate properly endorsed.

"$7,500. E. F. PIERCE, *Ag't.*

"H. S. Crocker & Co., S. F."

Q. Do you know whether that check of ten thousand dollars which you drew and delivered to Silva was ever paid?

A. Yes.

Q. By whom?

A. It was paid by the Bank of California to Wells, Fargo & Co.

Q. At the time you delivered him the check I understand you to say he made the conveyance which is already in evidence here?

A. Yes.

Q. And marked "Complainant's Exhibit No. 4?"

A. Yes.

Q. Now, I will ask you if at the time you purchased the Stirling mine there was any conversation concerning the property mentioned and described in the deed marked "Complainant's Exhibit No. 5," which is the deed to the springs, etc.?

337 A. At the time of the purchase?

Q. At the time you purchased the mine.

A. Yes; he told me that he would put these springs in, and that would go into the sale.

Q. Did you buy any springs from him? You bought the Stirling mine for ten thousand dollars?

A. Yes.

Q. Was there anything said about the other property mentioned in Exhibit 5?

A. Yes; there was.

Q. Was there anything said about the property described in Complainant's Exhibit No. 5 and the property mentioned in Complainant's Exhibit No. 4 other than the Stirling mine?

A. Yes.

Q. What was said about that?

A. When we went out there he explained to us that he had located these other mines as extensions of this Stirling mine and these two springs; one, as I understood, was about a mile away and the other three or four miles. I never saw the spring, nor did I ever go on the ground of these extensions. When he came out here, in talking this matter over, I said to him, "I want these extensions to protect the Stirling mine. I do not know that they are worth a cent, but I want those to go in with this Stirling sale. The springs may be of use and may not. You can put them in." In other words, I took all the property I understood he had in that vicinity and made a clean sweep of the whole business, and it was agreed to. If
338 you notice these deeds are signed at different times. The way that occurred was these extensions were not surveyed on the surface, and after he got this check it was arranged that this engineer that we had named Oliver was to go down with him and measure out this ground and stake it; then we would get the deed for the those extensions. That was done in March.

Q. Was or was not any value attached to the property other than the Stirling mine?

A. None at all.

Q. The money was paid on the Stirling mine?

A. Yes.

Q. This was Silva's own proposition, to throw this property in? He called attention to it, said he had it, and offered to throw it in?

A. He told me he had it and did not object to do what I told him. I forget whether he offered it.

Q. You did not know anything about it until he told you?

A. No.

Q. You went there about this Stirling mine to buy it?

A. Yes, sir.

Q. And he told you about this other property?

A. Yes.

Q. And he offered to throw it in?

A. Yes.

Q. He represented to you that the springs might be of some value in case you worked the mine?

A. Yes. In addition to that I might say he never did a stroke of work on those extensions to hold them, and I do not
339 know anything about them.

Q. Now, Mr. Yerington, look at the model marked "Plaintiff's Exhibit No. 2." Do you recognize that article?

A. Yes.

Q. What is it; what does it represent, if anything?

A. It is a model of a portion of winze No. 2 of the portion of the drift on the thirty-eight-foot level and what is termed the ore chamber in the Stirling mine.

Q. Look at the inside of the ore chamber and see if you notice red streaks there.

A. Yes.

Q. State whether those red streaks would fairly represent the ore on the sides of the chamber as you saw it at the time you made the purchase.

A. Yes.

Q. Now, the white portion on the floor and bottom you did not see?

A. No.

Q. That was covered with ore, as you have described?

A. Yes.

Q. Then, with the bottom of that chamber filled up so as to conceal all the white and up to the red lines, would it or not fairly represent the chamber as it was on the day that you visited it with Frank Silva?

A. Yes; and it is a very fair representation of it.

Q. Did you see that chamber afterwards?

A. Yes.

Q. Then, with the bottom of the chamber all cleared out and no waste in the bottom, would the model then be a fair representation of the ore chamber in its condition at that time?

A. Yes.

340 Q. You say Mr. Eddy was over there with you at the mine?

A. Yes.

Q. Was or not Mr. Eddy present all the time with you?

A. No; he was not with us all the time. We got there ahead of time, and I am very sure that Mr. Forman, Mr. Silva, and myself were in that ore chamber there by ourselves quite a time. I no not know just how long.

Q. Mr. Eddy was not present at the conversations between yourself and Mr. Silver—all of the conversations?

A. Not all of them.

Q. Do you know whether he was present during any of the conversations?

A. I am not sure. I think not, about the two thousand tons, because he took no part in the talk at all, and it was a matter that I was trying to get from Silva. I did not consider that Mr. Eddy knew anything about the mine, as a miner. I never understood that he was a miner, and Silva was the man I was dealing with.

Q. Have you been in several mining districts in the States of Nevada and California?

A. Yes.

Q. Are you familiar with the mines of several districts?

A. Yes.

Q. Have you visited a great many mines in your time?

A. Yes; a great many.
Q. In California and Nevada?
A. In California and Nevada.
Q. Anywere else?
A. No.
341 Q. What do you understand by the expression "ore in sight?"
A. I understand by that that a man goes into a mine and sees a certain body of ore or goes into a drift and sees a certain amount of ore. He goes into other drifts and sees other ore. He then figures the continuation of these bodies and makes his measurements, reasoning and assuming, under the condition and the country rock and how the whole mine stands and from the contour of the bodies, that he can judge very closely as to what he would reasonably expect to get, supposing he went and took that ore out.
Q. Have you heard the expression "ore in sight" in many of the mining districts that you have visited?
A. I have always heard it where I went.
Q. State whether it is a term in common use among miners and mining men and men engaged in the business of buying and selling mines.
A. Yes.
Q. And buying and selling ores?
A. Yes.
Q. It is an expression in common use?
A. Yes.
Q. It does not mean the ore that you can actually see as you would see that paper?
A. No.
Q. Or you would see a lump of ore in your hand—that is not the meaning of it?
A. I do not think that is the understanding of it among others.
Q. It is a phrase peculiar to miners and men engaged n
342 the mining business?
A. Yes.
Q. Had you any knowledge whatever of the work done in the mine except such as was given to you and imparted to you by Mr. Silva?
A. No, sir; none whatever.
Q. What effect, if any, did the representations of Silva as to the quantity of ore in sight and the fact that he stated to you that he had shown you all the work of every kind and character done in the mine have upon you in the matter of inducing you to purchase?
A. It had a very great effect upon me.
Q. State whether it was those representations as to the quantities of ore in sight and as to the work done which enabled you to make up in your own mind the value of the mine and what price you would give for it—whether it was the basis.
A. It was. It decided me very greatly in the purchase of the mine. I want to add one thing to that—that the value of the ore he told me had been worked——

Q. I speak about the quantity of the ore and the fact that no work had been done; in fact, that you had been shown all there was to be seen about the mine. Was or was not that the basis of your calculation in making up in your own mind the value of the mine and what you would give for it?

A. It had everything to do with it.

Q. If you had known that secret work had been done in that mine and that the ore chamber had been worked down to solid lime, which was encountered in the floor, and that what appeared to you to be a continuous vein of ore had really given out, what effect would
343 that have had on your making the contract or purchase, if any?

(Objected to by counsel for the respondent on the ground that it is incompetent, irrelevant, and immaterial and not tending to prove any issue in the case, and is a hypothetical case not warranted by the evidence in this action.)

A. I would not have touched the property at any price or under any circumstances.

Q. Had you known that the limits of the ore apparent in the ore chamber had been already discovered and known to Silva by drilling and such other means as were employed to discover that fact would you have purchased?

(Objected to by the counsel for the respondent as immaterial, irrelevant, and incompetent and not tending to prove any issue in the case.)

A. No; I would not.

Q. Had you known the real facts as to the condition of the ore chamber would you or not have purchased the mine?

(Objected to by counsel for the respondent on the ground that it assumes that other facts existed which the witness did not know. The evidence sought to be taken is hypothetical and not warranted by the facts of this case and misleading, and as irrelevant, immaterial, and incompetent.

A. I certainly would not.

Q. State whether the springs and property which were conveyed and offered to be conveyed to the company by Silva had any influence whatever upon you in making the purchase of the Stirling mine.

A. None whatever.

344 Mr. MINER: I move to strike that out on the ground that it is immaterial and irrelevant. As a matter of fact all the property was purchased and included in the purchase, and is immaterial whether one party or the other exercised any influence.

Mr. REDDY: After you took the deeds of conveyance from Mr. Silva to the company did you visit the Stirling mine?

A. Yes.

Q. When was the first time after that?

A. I arrived at that mine, I think it was, on the 9th of March, 1884.

Q. Did you put any one in charge of the mine at that time?

A. I put Mr. Coffin in charge.

Q. On the 9th of March?

A. Yes.

Q. In what capacity?

A. I put him in as the superintendent of the mine.

Q. What Coffin?

A. H. W. Coffin.

Q. Were there any men set to work under him?

A. He had instructions to go on and employ men, and on the same occasion I employed Silva to act as foreman.

Q. Under Mr. Coffin?

A. Yes.

Q. When was the possession of the mine formerly delivered over to you—on that day?

A. I suppose it was.

Q. You met Silva there on that day?

345 A. He went down with us.

Q. You took possession?

A. Yes; previous to that this man Oliver was there acting on my behalf and made the surveys.

Q. When did Mr. Oliver take possession or go upon the mine?

A. He went onto the mine immediately after the 5th of February.

Q. Immediately after the conveyance by Silva to the company?

A. Yes; they went down together; he and Silva.

Q. Mr. Silva took him to the mine?

A. Yes; and he made surveys.

Q. Was Silva working for the company at that period?

A. No; it was understood when he was here I would like him to go to work for us. He agreed to do it.

Q. On the 9th of March you went into the mine?

A. Yes.

Q. And found it was in the same condition it was in at the time you visited it with Silva?

A. Yes; I went all through the mine on that occasion, and it was in the same condition as when I was there previously.

Q. No one had been down in the meantime?

A. Yes; Governor Adams was with me and I went through all that mine from one end to the other with him, just as Silva did with me in January, 1884.

Q. Showing it to Governor Adams and also your superintendent?

A. Yes; I think that was the first time that Mr. Coffin went through it. The condition of the mine was exactly as it was when I was there. I did not see a particle of change.

Q. You left Coffin in charge as superintendent of the mine?

346 A. Yes.

Q. You then went away?

A. Yes.

Q. When did you next visit the mine?
A. Early in May.
Q. Could you fix about the time?
A. I think it was about the first of May.
Q. Was Mr. Coffin there then?
A. Yes.
Q. Still in the same office?
A. Yes.
Q. Did you find any change in the condition of things? Had they been working in the meantime?
A. Yes.
Q. What condition did you find the mine in? Commence with the ore chamber.
A. When I was down there on the 9th of March, after going through the mine with Coffin, Silva, and Adams, we laid out a programme, and that was to go down to the bottom of this winze No. 1, which was eighty feet deep, and run a drift under the ore chamber. That was at the bottom of winze No. 2, the distance supposed to be about forty feet. The object of that drift was to cut this ore body that apparently was going down.
Q. To cut the ore chamber?
A. Yes; and I explained that all to Silva. I told him just what I wanted to do, for I felt confident, and he told me he felt confident, that we would cut the ore in that drift. The difference in the depth was twenty-five feet in round numbers; we would be twenty-five feet under that chamber when we got there, with the drift from bottom of winze No. 1.
Q. Vertical?
347 A. Vertical. I put him in charge of that drift, at least I asked Mr. Coffin to do so, and give him the number of men he wanted and all the tools and everything necessary to run it, and he understood the situation exactly. He said he would take hold of it and run the drift. As I say, I felt very confident he would get ore there, and so did he; he was talking to me about it. After getting all this thing fixed I came home; we were going to put up buildings and other things there. I left Mr. Coffin in charge and came home. It ran along, I think, until the middle of the following month or the early part of April, when I got a letter from Mr. Coffin telling me that Silva was taken sick and that they had got that drift run about half through or possibly two-thirds; it excited my suspicion, the moment I got that letter, that there was something wrong.
Q. When you speak of February, March, April, and May you mean the year 1884?
A. Yes; of course, I am giving you this from memory; I have not got the letter here; he wrote to me to that effect, anyhow. I thought they were making slow progress, and Mr. Silva was a very stout, healthy man, as I thought, from his appearance; I was surprised to find he was sick and had gone off to Lone Pine. I wrote to Mr. Coffin and told him under those circumstances to go ahead and drive the drift himself; to do the best he could and get into this body of ore. It ran along until towards the end of the month, when I got a letter

from Mr. Coffin, the superintendent, stating to me they had run that drift, made an upraise, and discovered no ore whatever; that
348 they had got a stain; something of that kind; that they had discovered a lot of drill holes.

Mr. MINER: Have you got those letters?

A. I think I have that letter about where he stated he had run the drift.

Mr. MINER: I move to strike out all this evidence in regard to the contents of the letter on the ground that it is secondary evidence, and it appears there is better evidence.

A. I will state to you that the letter about Silva I have not got.

Mr. REDDY: What has become of it?

A. It has been destroyed, mislaid, or thrown away.

Q. Have you made diligent search for it?

A. Yes.

Q. In all the places where you would be likely to find it?

A. Yes; I hunted for it yesterday.

Mr. REDDY: I will consent to strike out the fact that Mr. Coffin wrote to Mr. Yerrington that they had broke into the ore chamber and found no ore, and that he had discovered a lot of drill holes.

A. As quick as I got that letter I knew there was trouble.

Q. You thought there was, at least?

A. I was dead sure.

Q. In your own mind?

A. In my own mind. The next morning I jumped onto that train and went over to Darwin as quick as I could get there. I took a team from Keeler and drove straight through to that mine. I got down there.

Q. What time did you get there; what date?

A. I think that it was the first of May. I found him,
349 Coffin, there. I think I met Mr. Price at Darwin on that very occasion, and took him down there; he got a horse and came down. I went into the mine with Mr. Coffin. We went into that tunnel marked "easterly branch," and went down winze No. 1, and from there we got into that drift, which was to go to cut this body of ore under the ore chamber, at the bottom of winze No. 2. We followed it and we came to the end of it. There was no ore there at all. There we found an upraise which, according to Mr. Coffin's measurement, would take his upraise right up into this ore chamber. There we found simply a stain; no ore. I followed it up and got into the chamber, and there was no ore there at all in the bottom; it had all gone.

Q. What did you find for a bottom there?

A. I found they had upraised right into the chamber, and in doing that, of course, this little ore that was there collapsed and went down through; there was no continuation of it.

Q. Look at the model and the point marked "hole" on the map; you see it from the lower end of the chamber there. Is that the point where you connected this upraise?

A. Yes.

Q. From the eighty-two-foot level?
A. Yes, sir.
Q. What kind of rock did they pass through in going from the eighty-two-foot level to that hole?
A. In limestone.
Q. What kind of rock composed the floor of the ore chamber where Silva said it was solid ore?
A. Limestone.
350 Q. And on the sides of the chamber what did you find?
A. Limestone with little streaks of ore.
Q. Streaks or blotches?
A. Blotches here and there around like figures on a wall paper.
Q. What were these blotches attached to?
A. To limestone.
Q. What is the country rock there?
A. It is generally lime.
Q. Then, as I understand, you mean Mr. Silva had told you there was solid ore, referring to the bottom of the ore chamber, and you found it solid lime instead?
A. Yes.
Q. And on the sides you found limestone?
A. Yes.
Q. And you found that the upraise from the lower level coming up into the bottom of that chamber had passed all the way through?
A. All the way through in lime.
Q. The little hole which is sunk down from the bottom or floor of the ore chamber—what are the sides of that composed of?
A. That was lime; my impression is that his upraise connected with that hole.
Q. You found the sides of that hole to be composed of limestone?
A. Yes.
Q. The chamber had then been cleaned out?
A. Yes.
Q. Did you see any drill holes anywhere in ore on the sides of that ore chamber in those blotches?
A. I did.
Q. How many?
A. I saw several.
351 Q. Give the number, as near as you can remember it.
A. There must have been five or six at least. I went through this hole that I speak of from that ore chamber that went into this drift north, and where he had cut a right-angle drift, say twenty feet long. I spoke of that in my evidence. There is where the wall showed splendid ore; they were intact. When I went there on the second occasion nothing had been done, but I saw the number of drill holes there that Mr. Coffin or his men——
Q. This was in May that you saw the drill holes?
A. Yes; I had a candle with me. I walked right along, the same as walking along this wall, and felt, and finally I found one or two holes that had been filled up with soft ore that had apparently fallen down on the bottom of the drift and then taken from them and put

in holes to hide there. I found it by running my hand along on the wall with my thumb this way, and when I came to a soft spot it would give way and there I found a couple of those holes. I think there were one or two or three others positively that had already been opened by Mr. Coffin. I ran a drill in or a spoon or something of that kind, and I think those holes were about sixteen inches deep; they were as long as a drill could have been admitted to be driven from the width of the drift. You could not get a longer drill in; it, the drift, was too narrow. Then I came out of that, and I went into the bottom of the winze—the ladders were in there—No. 2 and along in the sides of the walls of that winze, where the ore stood—bright galena ore that I saw in January, when I bought the mine, and in March; holes had been driven through that ore, and
352 in some cases they were in three inches deep, and in some cases six or eight, and in some I do not know how deep.

Q. Did you find any drill holes in any other part of the underground works?

A. No; I did not myself at that time.

Q. None were shown to you?

A. None were shown to me. I believe there was in the bottom of this winze one or two portions of a hole only, because in taking out the bottom in this upraise the whole thing went through, holes and all; but Mr. Coffin explained to me that there were a large number of holes that had been opened in there and run all around this body of ore.

Q. How much of the ore — been removed that was in sight when you were there?

A. All of it had been taken, except what was in this shaft and this little side cut that I speak of.

Q. Then when you went there in May you found that portion of the mine which you regarded as most valuable entirely exhausted?

A. It was not worth a cent. I made an estimate when I was in that chamber and I did not believe five tons could be taken out of what was left.

Q. Did you visit the point of location on the surface?

A. We went all round through the mine. I stayed there that night; that night Mr. Price came. The next morning we all went into the mine again and looked it all over. It looked awful blue. There was no show for ore at all that I could see, except from
353 these cuts that were on the surface, that would be tunnel "A," tunnel "B," and tunnel "C," and the point of discovery. Those were the only points that I could see there was any possibility of getting any ore. I put Mr. Price in charge as foreman in place of Mr. Silva. He, Silva, never came back after the time he said he was taken sick. Of course, the idea I had exactly was just this——

Mr. MINER: Never mind the idea.

A. However, I took Mr. Price and we went through the mine below and then came out. We went all through these tunnels and went to the point of discovery. I told him, "We have got to do something to see if there is any ore left in this mine. I want it

thoroughly prospected to see." We discussed the whole question, he and I and Coffin, and came to the conclusion we would start at the point of location; that at that place, marked on the map "point of location," we would start work there and follow that ore and see what it would lead to. Then I told him to go and put some men in tunnels "A," "B," and "C," where we thought it was best, and try and open up and see if he could find any ore at those points. I had it all understood and then started for home. I came home. I went down to Wells, Fargo's. I came direct home. I found Silva was down at Lone Pine. I learned that at our station as I came along on my way towards Carson. I came up to Carson. I went to Wells, Fargos and Co.'s office as soon as I got home that night and found this certificate of deposit had not been paid. I went to work at once and gave them notice not to pay it.

Q. That you claimed the certificate of deposit?

354 A. Yes; that he got it by fraud and had no right to it. Then the next day I started back for Independence, or a day or two after. General Clark went down with me. He went as on a sort of pleasure trip. I went right down to Independence. I went to Mr. Conklin and laid an information there.

Q. Had you a deed made out?

A. I think I had a deed made out of the property.

Q. Of all he had conveyed to the company?

A. I think so.

Mr. MINER: Have you got that deed?

A. No.

Mr. REDDY: I have got here a certified copy of it.

Mr. MINER: The deed that was made out at that time?

Mr. REDDY: The certified copy of the deed which we took into the court, and which is the same as the deed tendered by Mr. Yerington to Mr. Silva at the time he is testifying to.

Mr. MINER: I move to strike out the answer of the witness where he says he thinks he had a deed made out.

Mr. REDDY: State whether you tendered any deed to Silva afterwards.

A. I will tell you what occurred. I went to Independence. This warrant was got out; it was given to the sheriff. The sheriff went over to Darwin and brought Silva down to Keeler, the end of the railroad. After he heard I was down there he put out from Lone Pine and put for Darwin.

Q. What do you mean—fled to Darwin?

Mr. MINER: I object to your using the word fled.

A. Yes; he went there as quick as he could.

Mr. REDDY: What do you mean by "put out?"

A. I found he had gone. The sheriff went over there and

355 got him and brought him down to Keeler, and I was at Keeler with Mr. Conklin and General Clark when he arrived there with the sheriff, and Mr. Silva, Mr. Conklin, General Clark, and myself went into the railroad office. We shut the door and

were there alone by ourselves. I said to him—I talked very sharply to him.

Q. What day was this?

A. This was some time in May. I have forgotten the day.

Q. How long after you visited the mine?

A. I came back here and went to Independence; went over from there down to Keeler.

Q. Give us your best judgment as to the time.

A. It must have been the 8th or 10th of the month, I should think. I have not any means of telling.

Q. Your best judgment is sufficient.

A. Somewhere thereabouts. I talked very severely to him. I told him I was very sorry, in the first place, to be obliged to have the sheriff go for him. He complained he had been treated badly about that. I said, You have simply robbed me in this transaction and I do not propose to stand it. That he denied. I said to him, "In the first place you stated to me positively and insisted upon it that there were two thousand tons in this mine. You told me at Carson there was no secret work done in that mine, and I find it has been drilled; it is absolutely worthless, and you knew it at the time you sold it to me." Said I, "I do not propose to stand this at all." There was a piece of chalk on the counter. He said there were two thousand tons of ore in the mine and insisted it was so,
356 and that he knew it. He took up a piece of chalk and laid out on the floor how the body of ore stood and how the drill holes were, and insisted they were put in as a miner worked a mine. I told him I knew better; it was all nonsense. He had not fired off a single hole, and it was simply to ascertain whether this ore body went down or not; that was what the drilling was done for.
357 It was a robbery on his part—cold-blooded. I felt very indignant and very much annoyed, and talked very severely to him. I finally said, "You have committed a great wrong here, and I want you to rectify it as far as you are able. I am prepared to give you a deed of this property, and you give me back my ten thousand dollars. We have expended about five thousand dollars in the way of buildings and works and putting in car tracks and blacksmith shops, and all the things necessary. It cost me to get my teams down there to haul this ore one thousand dollars. You say there are two thousand tons of ore in the mine. I will give you this whole business and five thousand dollars' worth of buildings and you give me back my ten thousand dollars." He said, "I will not do it. That is flat. It is no use talking." We talked some time, and he swore he would not do it. Then we got ready to start for Independence to come home. Judge Conklin was on the car, and General Clark and the sheriff and Silva. They were on a flat car in front of my car. As we went along I thought the matter over, and concluded he, Silva, had spent the twenty-five hundred dollars in coin that I knew had been sent to him, and there was no use in me asking him for money he did not have. Thinks I, "I will turn round and take this certificate of deposit for seventy-five hundred dollars and quit and give him back the property." I went in and

talked to Judge Coffin and General Clark. They said probably that would be the best thing todo. When we got to Independ-
358 ence the train stopped there. Silva was going up to the jail with the sheriff. I got off the train with him and stopped at the Independence station, and talked with him at the corner of the office. I said, "I do not want to do anything that is harsh and ugly here with you. This thing has been done. Now, I will make another proposition. I will give you a deed of this property; you can take everything that is there, and you give me back this certificate of deposit for seventy-five hundred dollars, and that ends the whole business." He said he would not do it; he would not do anything of the kind, and refused absolutely and positively to do it. That ended it. The sheriff went off with him up to Independence, and I came on home.

Q. At the time that you visited the mine on the 9th of March, 1884, and put Mr. Coffin in charge as superintendent were there then any tools or mining implements turned over by Silva to you or to your superintendent?

A. I do not think there was anything in the shape of tools excepting some little blacksmith stuff; that is my impression. I am pretty sure there was not a pick or a shovel or anything of the kind turned over, because there was nothing there to turn over; there was nothing there in the mine.

(Recess to to-morrow, Wednesday, June 9, at nine o'clock a. m.)

359 WEDNESDAY, *June* 9, 1886.

(Counsel and parties met pursuant to adjournment.)

H. M. YERINGTON recalled for complainant.

Mr. REDDY:

Q. Mr. Yerington, you say that you met Mr. Silva at Keeler early in the first days of May?

A. Yes, sir.

Q. At the railroad office?

A. Yes, sir.

Q. State whether you made any demand upon him for the rescission of the sale of the property.

A. I did.

Q. State whether you made any demand upon him for the return of the purchase price of the mine.

A. I did.

Q. State whether you demanded of him the certificate of deposit for seven thousand five hundred dollars which he received from Wells, Fargo & Company.

A. I did.

Q. Did you state to him the ground on which you demanded the rescission of the sale and the return of the certificate of deposit mentioned?

A. On the ground that he had committed a fraud in the sale of the mine to me, and that he had received the money under those circumstances; consequently I demanded that he give me back the money and the certificate, and I would make him a deed for the property.

Q. State whether you tendered him a deed, and whether you offered to give him back the possession of the property just as it stood then.

A. I did.

360 Q. Of the entire property?

A. Everything that we purchased of him. In addition to that, I would give him all the improvements and everything we had done there, which at that time I estimated at five thousand dollars.

Q. Have you ever withdrawn that offer? Have you always been ready and willing to make that offer good?

A. Always.

Q. I believe the company executed another deed on the 13th day of April, 1885, and filed it with the clerk of the circuit court in San Francisco, conveying all the property which you had received from Silva?

A. Yes, sir.

(Counsel for respondent moves to strike out the answer to the last question on the ground that it is immaterial and irrelevant and incompetent, for the reason that it appears that said deed was executed long subsequent to the commencement of this action, and does not appear to have been tendered to Silva until long after this action was commenced, nor does it appear that any deed was ever in fact tendered to Silva, the defendant.)

Q. Look at that deed. Do you recognize that deed?

A. I believe I do. This is supposed to be a copy of a deed that was given. I know I sent a deed down at that time, and, as far as I know, that is a copy of it.

361 Mr. REDDY: We offer a certified copy of the deed in evidence.

(Marked "Complainant's Exhibit 6.")

(Counsel for respondent objects to the introduction of the deed on the ground that it — irrelevant, immaterial, and incompetent and not tending to prove any issue in this case, and on the further ground that the said deed appears to have been executed long subsequent to the commencement of this action; nor does it appear that the said deed or a copy thereof has ever been served on Silva, or tendered to Silva, the defendant in this action; nor does it appear that the said company are in a position to deliver the possession of said property to the said Silva; nor does it appear that the said company were in a position or able to deliver the possession of said property to the said Silva at the time the said deed was executed; nor is it shown that the said company have now the title to the said property or the possession of the same.)

Q. What answer, if any, did the defendant Silva make to the various demands and offers which you have testified to?

A. He refused positively to accept them.

Q. Or comply?

A. Or comply.

Q. Mr. Yerington, will you be kind enough to state again what was said, when you were in the ore chamber, as to the bottom of that chamber; as to what it was composed of?

A. In his conversation with Mr. Forman?

362 Q. Yes, sir.

A. Since yesterday I have refreshed my memory about that business, and I had means of doing it. I am now positive that Mr. Forman said to him, "Mr. Silva, this floor here is covered with ore to quite a depth. Mining men, under those circumstances, would be a little suspicious as to what is below. I want you to tell me what is the character of this floor, so that I will understand it." He told him it was ore; and he said "It is good ore and as good ore as you will see here, if not better."

Q. Referring to that—the ore on the sides?

A. He referred to the ore that was on the sides of the chamber and this pyramid of ore. It was right in sight. It was that pyramid from which the ore had gone down to cover the floor.

Q. State whether you ever assayed, or caused to be assayed, the ore referred to by Silva on the sides of the chamber that you could see.

A. Yes, I did. I had those samples here and had them assayed.

Q. What did that ore which was referred to by Silva on that occasion assay?

A. The average of that ore in that chamber went over fifty ounces—that we had—in silver, and over sixty per cent. lead, my impression is.

Q. Now, I will ask you how the floor of that chamber was

363 covered, or rather to what extent. Was it covered to an extent which prevented you from seeing the floor and what it was composed of?

A. Yes, it was; it was covered, apparently, a foot or two, or more; I could not tell.

Q. You did not know how deep?

A. No; I could not tell how deep.

Q. Were there any shovels or means of removing that dirt?

A. There were none in that chamber that I knew of, or anywhere round the mine. I believe there was an old pick or shovel in the bottom of the winze.

Q. Was there anything to remove that dirt?

A. We had nothing there te remove the dirt in the chamber.

Q. You took his word for it, then?

A. Entirely. I had no other means of knowing.

(Counsel for respondent moves to strike out the answer to the last question *and* the ground that the question is leading.)

Q. State whether Mr. Silva made any representations to you as to the value of the mine—that is to say, in gross?

A. Do you mean the money value?

Q. Yes; the money value of the mine.

A. He told me he believed the mine was worth fifteen thousand dollars—that is what he wanted for it.

Q. Did he make any statement over and beyond his belief?

A. He said it was worth fifteen thousand dollars, but he would take twelve thousand five hundred for it.

364 Q. I understood you to say he stated to you there were two thousand tons of ore in sight in the mine?

A. He did.

Q. How was that term understood by you at the time in the local and peculiar sense of the term as used by miners?

A. As I understood, what he meant by it was that he could go into that mine and take out two thousand tons.

Q. That had already been explored?

A. That the mine was opened sufficiently to show he could get out two thousand tons of ore.

Q. What was the value of the Stirling mine, excluding from your calculation any ore in the ore chamber and any ore from the point of location?

(Counsel for respondent objects to the question on the ground that the evidence sought to be obtained is irrelevant, immaterial, and incompetent, as the mine was bought as a whole, together with other property, and no contract of sale was made or agreement entered into between the parties to the said sale for any particular portion of said mine, but for the entire property in one lump, and further calls for the opinion of the witness and not for the fact.)

A. I would consider it of very little value.

Q. What value?

A. None at all for me.

365 Q. In view of the cost of preparing to work that mine and the fact that it was distant from water and other supplies, what was its value, excluding what was anticipated in the ore chamber and at the point of location?

(Objected to by counsel for respondent on the ground that it is irrelative, immaterial, and incompetent, calling for the opinion of the witness, hypothetical, not based upon the evidence in the case, and it has not been shown what it would cost to work the mine, nor does it appear that the witness is competent to testify as to the value of mines at all; that his evidence rather shows that he is no expert at all, and has been deceived by his own judgment in regard to the mine.)

A. In my judgment, it would have been worthless.

Q. It was so, was it not?

A. Excluding that, it would be worthless.

Q. There was not anything there, was there?

A. That is true.

Q. And excluding the ore from the points named, what was the value of the entire property conveyed to you by Silva? I speak now of the Stirling mine and the whole thing together; was it of any value?

A. None whatever, as far as I know.

Q. What was done with the ore which was taken out of that mine during your administration of affairs there, or, say, from the purchase until the present time?

A. It was sold to Mr. Gorman, all that was of any value.

366 Q. You heard him state the number of tons the other day?

A. Yes, sir.

Q. That is correct, as you understood it?

A. Our books show thirty-six tons.

Q. You stated yesterday that in the points marked "A" and "C" on the map you found there a showing of ore?

A. Yes; "A," "B," and "C."

Q. In one of those places you found about two feet of ore?

A. Yes, sir.

Q. In an incline?

A. Yes, sir.

Q. At the time you made your first examination and the time that Silva was there showing you the mine?

A. Yes, sir.

Q. I will ask you if that was connected with the tunnel. I understood you to say that it was connected with the tunnel.

A. That is what I understood; I did not go through it; I understood from him it was.

Q. That would be what is termed the works above the tunnel?

A. Yes; upper works above the tunnel level.

Q. After you were informed or supposed there was something wrong about the representations of Silva you went there and examined the mine again?

A. Yes, sir.

Q. Did you go up through the stopes and look at this ground?

A. I do not think I did; I did not go up through the

367 stopes. My memory is that I went into the open cuts—that is, the tunnels "A," "B," and "C."

Q. Did you find that ground had been worked?

A. My memory is that I found one of those excavations having been made that I did not understand to have been made when I was there first and bought the mine.

Q. And that also was kept secret from you by Silva?

A. Whatever the extent of that was, it was; but I do not remember the details about that; I do not remember to what extent.

368 Q. Can you tell us what expenditure you made on that mine after you purchased it, and before you tendered it back to Silva?

(Objected to by counsel for the respondent on the ground that the evidence is wholly immaterial and irrelevant and not being

embraced in the issues in this case nor tending to prove any of the issues in it.)

A. I find that the amount we expended on the mine from the time of first commencing work until the end of June, when we quit operations, was seven thousand four hundred and fifty-seven dollars and fifty cents. After that Mr. Price went down and worked there a week or so, and the amount expended on that account was one hundred dollars; that is not included in this seven thousand dollars. I find that from the 1st of May, when I discovered that this mine had been drilled, up to the end of June, when we quit work, that we expended eighteen hundred and forty-one dollars and fifty-six cents; that is included in the seven thousand four hundred and fifty-seven, so from this it goes to show that I was about right when I told Silva at Keeler that we had expended five thousand in the mine up to that time.

Q. What improvements did you put on the mine and what was the cost of the improvements in the way of buildings?

Mr. MINER: I make the same objection to all this testimony.

A. Well, we built a boarding-house, a blacksmith shop, and an assay office, and we fixed some roads and one thing and another.

Q. Speaking about the buildings and permanent improvements put upon them, what was the cost of the buildings?

369 A. I do not know.

Q. You know something about it?

Q. They must have cost us in the neighborhood of one thousand dollars, all told.

Q. All those buildings?

A. I should think so. They may have cost more. I could find out just what they cost, but it would take some time to do it. They possibly cost more than one thousand dollars. I should say they cost in that neighborhood. They were very good buildings and shingled.

Q. After you had tendered the deed back to Silva you continued to work there for what purpose?

A. To find whether these ore bodies that they had there when I was there, which were shown there, whether they extended.

Q. What you supposed were there?

A. Yes; what I supposed was there; whether they extended or not in the mine, and I wanted to work on the lower level—the intermediate level—and upon the surface of these tunnels, and we did until there was no show in the world, as I understood from our superintendent and Mr. Price, for anything.

Q. You sent another man down to the mine, did you not, some time in September?

A. Whom do you refer to?

Q. Mr. Price?

A. Yes.

Q. That was long after June?

A. Yes; that was in the fall.

Q. That was another effort that you made there?

A. Yes; another effort that we have made to find more ore.
370 Q. How long was Mr. Price there?
A. A week or ten days.
Q. Did he have an assistant with him?
A. Yes; he had another man.
Q. State whether you put him there to work in consequence of the testimony given by Alexander, one of the witnesses for the defendant in the case of the People of the State of California against Frank Silva.

(Objected to by the counsel for the respondent on the ground that the question is leading and calls for the reason of the witness, and is immaterial and irrelevant.)

A. Yes.

Cross-examination by Mr. MINER:

Q. How many years have you been engaged in the mining business?
A. I have had to do with milling and mining since 1863.
Q. Purchased and sold mines during that time?
A. Yes.
Q. Do you know upon what mines are usually purchased and sold?

(Objected to by the counsel for the complainant on the ground that it is not cross-examination and is immaterial and irrelevant.)

A. Yes; I think I do.
Q. Upon what are mines sold or bought?
A. Upon their supposed value.
Q. Are they not sold upon what is called the prospect, the appearance, that they present to a person's eye?

371 (Objected to by the counsel for the complainant on the ground that it is cross-examination and is immaterial and irrelevant.)

A. Sometimes they are sold on a prospect and sometimes on the ore that is in sight.
Q. Is not that what is called the prospect?
A. No.
Q. What is the prospect? You made a distinction between "a prospect" and "ore in sight." I want to know what it is.

(Objected to by the counsel for the complainant as not being cross-examination and as irrelevant and immaterial. The witness has not been put on the stand for the purpose of giving a definition of every word that may occur to the counsel's mind.)

A. If you run a drift into a mine and cut a ledge, it may be six inches wide of poor ore. That would be a mighty poor prospect. If you run one in and cut a ledge five feet wide of the same character that might be a better one, because after drifting on that it

might improve the value. You might cut a ledge twenty feet wide in which there would be a thousand tons of ore, and that would be a pretty good prospect, but what would be on each side of that prospect no man can tell until you run a drift in to see. That is what I understand to be a prospect. The value of that prospect would be just about as much money as a man would be willing to put up for. Some people might think it was a good one and some might not. Country rock and surroundings might have something to do with it.

Q. You have given illustrations instead of a definition. I want a definition, not an illustration.

(Counsel for the complainant makes the same objection as before.)

372 A. Is not an illustration better than a definition?

Q. No.

A. Why?

Q. Because I ask for a definition.

A. I do not understand what you mean by definition.

Q. I will ask you another question. Did you not purchase the Stirling mine mentioned in the pleadings upon its prospect—in other words, the appearance that the mine presented at the time of your visit?

A. That was one of the factors that entered into the reasons for my making the purchase.

Q. Does not that factor always enter into the purchase of a mining claim? Is not that the general rule?

(Objected to by the counsel for the complainant as immaterial and irrelevant.)

A. It does, to a greater or less extent.

Mr. REDDY: The witness will observe the questions put to him and state what you know yourself and not what other people do with contracts or making contracts. I state that with deference to the examiner and all concerned.

Mr. MINER: I will ask you if you are president of the Southern Development Company of Nevada, the complainant in this action, at the present time?

(Objected to by counsel for the complainant as immaterial and not cross-examination. It has been admitted by counsel that he was at all the times mentioned in the bill of complaint.)

A. I am not at present.

Q. Are you connected with the company in any way, shape, or form at the present time?

373 A. Trustee.

Q. Do you mean by that director?

A. Yes.

Q. When did you cease to become director of this corporation?

(Objected to by counsel for the complainant on the same grounds as before. The admissions of counsel cover all the time that is material.)

A. I think it was early in May.
Q. Was it not before that time?
A. That I ceased to become manager?
Q. Yes.
A. I think it was early in May of this year.
Q. Did you resign?
A. I resigned.
Q. Why?

Mr. REDDY: We object to that question, and Mr. Yerington need not answer it. I will state, with deference to the examiner and counsel, that I advise the witness not to give his reasons, on the sole ground that the question is illegal, immaterial, and cuts no figure whatever in the case, and is simply a prying into the business of the witness and his company which do not concern and are not connected with the issues in this case.

Mr. MINER: I will ask the examiner to require the witness to answer the question.

The EXAMINER: I have no power to compel the witness to answer the question.

Mr. MINER: Then let it be noted. I ask this question for the purpose of showing the interest of the witness in this case
374 and his connection with this company and his acts in regard to this transaction concerning the sale of this mine.

Mr. REDDY: I will ask the counsel if his purpose in putting this question is not to fish for information concerning another suit brought in Inyo county for damages, namely, the case of Frank Silva *versus* the Southern Development Company. I will ask counsel to state now on the record if that is not his purpose solely.

Mr. MINER: My purpose is to show the interests of this witness and his connection with that company, and to show, if I can, that he has had this man arrested in Inyo county, prosecuted him down there for the sale of this mine, and that when the defendant in this action brought a suit for damages for the sum of fifty thousand dollars for false imprisonment and malicious prosecution the witness, who up to that time had been the managing agent for this company in the State of California, resigned his position, as the defendant believes, for the purpose of evading the service of process in that case.

Mr. REDDY: Now, answer that question, and state your reasons for resigning. State all you know about that matter as broadly as you please. You can state whether counsel has been pursuing you with litigation and digging up litigation. You can state all you know about it. Give the entire history of the treatment of your company down there.

A. I have just got this to say: I bought this mine from this man in good faith. I paid him in good faith on behalf of the Southern Development Company.

375 (Objected to by counsel for respondent on the ground that it is not responsive to the question, and he moves to strike it out.

A. (Continuing.) I afterwards discovered that he had committed a fraud; that the mine was worthless, and he knew it when he sold it to me; that he misled me by word, act, and deed in the whole transaction, and when I discovered this I simply wished him to refund the money that I paid him. When I believed he could not give it all I was willing to take a portion, and I agreed to return the property, with all the improvements that we had made at a very large expense, all of which he refused. I got a warrant for him, and he was put in jail and tried for obtaining money under false pretences. During all of this a great many people in Inyo county took sides with him against the Southern Development Company, which I represented; that he was a poor man and the company was rich, and that he ought to beat them. I found that the judge in that county took that same ground; I found that the county attorney went on and tried the case without a witness on behalf of the State; I found that there was a determination to prevent justice in every way, shape, and manner in this matter; and I never persecuted this man in any way, shape, or form outside of what I considered to be his deserts. This case has been fought persistently by Silva and his attorneys; a number of suits have been
376 brought in regard to the criminal case and the certificate of deposit, and we have been in the courts here for over two years. Some time ago I incidentally learned that in addition to all this they proposed to sue this company for fifty thousand dollars damages, because I had attempted to make this man disgorge money he had wrongfully got, and for which, in my judgment, he ought to have been sent to the penitentiary, and I am informed that at the trial a portion of the jury thought so, too.

(Counsel for respondent moves to strike out all the foregoing as based on the witness' information and belief and not being responsive, in any respect, to the question asked by counsel.

A. (Continuing.) When I heard of this suit for fifty thousand dollars I did not get it officially and never had it officially. I made up my mind that it was a blackmailing suit, or intended in some way to head off this suit which we had against Silva. On consulting with the trustees and members of the Southern Development Company we all came to the same conclusion, and they advised with me and thought it was best for me to resign as president, one reason being it would prevent our being harassed in this way for no good reason, and that when I went into California on my business I would not be liable to be served. I may add to that that I have not kept out of California to prevent being served at any time.

Q. Was one reason of your resigning the office of president
377 of this company to prevent service of summons being made upon you in this action of damages by Silva against the complainant in this action in the State of California?

(Objected to by counsel for complainant on the ground that it is not cross-examination and is immaterial and irrelevant.)

A. That was one of the reasons.

Mr. REDDY: You can give all your reasons whether you could get justice down there or not, or any other reason.

A. That was another reason. I was satisfied we could not get justice in that county.

By Mr. MINER:

Q. You state you could not get justice in that county?

A. Yes, sir.

Q. Did you not disqualify the local judge of the superior court in that county in such a way that he declined, upon the request of the complainant in this action, to have anything to do with the criminal proceedings in this action against Silva?

(Objected to by counsel for complainant as not being cross-examination and as immaterial.)

A. I believe so.

Q. Did not another judge come from Alpine county to try that case?

A. I believe so.

Q. Did not he come to Carson with you at one time?

A. Where from?

Q. From Independence.

A. No; not to my knowledge. He never came with me. I
378 would like to tell the reason that we disqualified that judge.

Q. I am not asking you for that. When Mr. Reddy comes to re-examine you you can tell anything you want. I am willing that the whole thing should come out. There is nothing about this business that I want to conceal.

Mr. REDDY: If you mean by that to insinuate that we do not want it to come out you simply compliment our good sense, because there are a whole lot of things that are not competent in testimony, and that part we do not want to be bothered with.

Mr. MINER: I am entitled to show the interest of the witness.

Q. Did not three attorneys assist the Southern Development Company of Nevada in prosecuting that criminal action on the trial of it?

(Objected to by counsel for complainant as not being cross-examination, and as irrelevant and immaterial.)

A. I do not know the number of attorneys. I was not at the trial.

Q. Does that prevent you from knowing who your attorneys were?

A. I know we had two—Mr. Reddy and Mr. Conklin.

Q. Did not District Attorney Laird also act in the conduct of that prosecution?

A. I believe he did.

Q. Was not the fact that the people generally of that
379 county were in favor of the defendant Silva, as you state, if such was the case, because very few of them ever believed that you bought the mine on Frank Silva's representations?

(Objected to by counsel for complainant on the ground that it is not cross-examination and is irrelevant and immaterial.)

A. Well, I believe there was such a feeling.

Mr. REDDY:

Q. Do you know anything about it? You are asked if you know.

A. I do not. I have heard of such a thing.

Mr. MINER:

Q. Why did you say the Southern Development Company could not get justice in Inyo county, California?

A. In the first place, what first made me believe this was that the judge refused to give us an injunction to prevent that certificate of deposit from going out of the hands of the party in whose hands we believed it to be at the time, on the ground that the defendant was a poor man and that the company was rich, and that the poor man should use the seventy-five hundred dollars to defend himself. That is what that judge said, and I can prove it. That was one great reason. Then we were met by difficulties and botherations on every hand. It seemed as if there was a determination to prevent justice in this case.

Mr. REDDY:

Q. State all the reasons.

380 A. Then the trial came off and there were no witnesses on behalf of the State at all. It certainly looked very strange to me that a case could be tried without any witnesses. There was another reason; in fact there were a great many that I cannot bring to mind now.

Q. State in that connection whether the district attorney had so declared or not, if you know.

A. I do not know.

Q. Have you heard it?

A. No; I have heard nothing about it.

Mr. MINER:

Q. When that case was tried do not you know that all the evidence you had and have now in this case was put in at that trial?

A. I was not present at the trial.

Q. Why do you state there were no witnesses present on behalf of the State?

A. I know an application was made to the judge to put the case off because of the witnesses not being in the country, especially so as to Mr. Forman, who was in Mexico at the time. The affidavit was shown to the judge, and, as I understood, he said it was a reasonable request and he was willing to put it off, but that the county attorney, or whoever had to say about the matter, objected, and in-

sisted that the trial should go on. I understood that the judge did try that case against his better judgment; that he could not help himself.

Q. Was not all the evidence produced by you at the preliminary examination of Silva on that charge offered and received in evidence on that trial?

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A. As a matter of fact I do not know; I was not at the trial.

Q. Then you do not know what evidence went in and what did not go in?

A. I know the principal witness in that case was not there at all.

Q. Was not your evidence as written down at the preliminary examination put in evidence in that case?

A. I do not know.

Q. You just said that you did know what evidence went in.

A. I said that the witnesses themselves were not there.

Q. Whose fault was that?

(Objected to by counsel for complainant on the ground that it is immaterial and irrelevant.)

A. The fault was Mr. Forman's; he was obliged to be in Mexico at the time the trial was set and could not get there. He was one of the principal witnesses.

Q. Was not the trial set by consent of the prosecution and the defense weeks in advance and ample time given to have all the witnesses present?

A. I do not know how it was set or anything about that.

Q. You were present at the preliminary examination of Frank Silva?

A. Yes; before the justice.

Q. You had Mr. Reddy and Mr. Conklin attending to the case on your behalf as special attorneys all that time, were they not?

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A. They were there attending to the case.

Q. And attending to the prosecution?

(Objected to by counsel for complainant as not being cross-examination and as immaterial and irrelevant, and counsel gives notice that he will move the court to tax the costs of the taking of this testimony to the respondent in this action.)

A. I was told—I understood that Mr. Reddy was acting——

Mr. REDDY: Just say what you know.

A. I do not know; that is all there is about it.

Mr. MINER:

Q. Did you not employ Mr. Reddy and Mr. Conklin for the express purpose of assisting in the prosecution of Frank Silva in that criminal action?

(Objected to by counsel for complainant as not being cross-examination and as immaterial and irrelevant.)

A. Yes, sir.

Q. Do you not know that Mr. Reddy was present in person at that criminal trial?

(Same objections by complainant.)

A. I belive he was.
Q. When was the motion to postpone that case made?
A. I do not know anything about it.
Q. Did you not make an affidavit yourself for the postponement in that suit?
A. I believe I did.
Q. How long before the trial did you make that?
A. I could not tell you that. I do not remember.

Q. Were you not present in Inyo county during the prog-
383 ress of that criminal trial?

A. I do not think so.
Q. Let me refresh your memory. Did you not ride a portion of the way with Mr. Reddy, on the cars, at the time he was coming up to attend this trial?
A. I think I went to Hawthorne with him. I do not think I went any further.
Q. Did you not afterwards come down to the mill on the railroad track in Inyo county during the time that trial was going on?

(Same objections by complainant.)

A. I do not remember. I do not think I went any further than Hawthorne.
Q. Do you know Mr. Minear?
A. Yes, sir.
Q. Was he not connected with some mine or furnace on the line of the Carson and Colorado railroad in Inyo county?
A. He was at one time.
Q. Did you not visit that mine or furnace at the time that the criminal trial was going on?

(Objected to by counsel for complainant as immaterial and irrelevant.)

A. I do not remember being there at that time or in the county at all.
Q. Could you not have been present at that trial if you wished to be?

(Objected to by counsel for complainant as immaterial, irrelevant, and not cross-examination.)

A. I think I could.
384 Q. Why did you not go there?

(Objected by counsel for complainant as immaterial and irrelevant.)

A. Because without the other witnesses being there it was no use my being there; that is what I thought. I remember now my rea-

sons for staying away. I believed we could not get justice in that county. I have another reason, if you have no objection to my giving it.

Q. I have not asked any question. After I get through Mr. Reddy can ask you any questions he wants to. How many parties spoke to you about this Stirling mine before the Southern Development Company purchased it?

A. Well, there were several.

Q. Please name them.

A. Mr. Eddy was the first man that ever spoke to me about it.

Q. Who else?

A. Mr. W. P. Miller — Mr. S. D. Woods talked to me about it; I think Mr. Hamilton talked to me about it, and probably several others that I cannot remember.

Q. Did not Thomas Price, the assayer, of San Francisco, speak to you about it?

A. I think I wrote to Mr. Price. I do not remember ever talking with him about the mine at all.

Q. Did he write to you about it?

A. I think he did.

(Objected to by counsel for complainant on the ground that
385 it is not cross-examination and is immaterial and irrelevant.)

Q. Did not Mr. Charles Forman speak to you about it?

A. I think I did talk with Mr. Forman about the mine previous to purchasing it; in fact, I know I did.

Q. Did not Mr. D. L. Bliss speak to you about it?

A. I think I spoke to Mr. Bliss myself.

Q. He talked to you about the mine?

A. Yes, sir.

Q. Now, can you think of any other parties who talked to you about this mine before you visited there?

A. I talked with quite a number; I cannot remember them all.

Q. All previous to the purchase of the mine?

A. All previous to the purchase of the mine.

Q. Did Mr. Miller represent this mine to you as being a good proposition?

A. Yes; he thought it was a good one.

Q. Did Mr. S. D. Woods represent it to you as a good proposition?

A. I understood from him it was; it was what he had heard from others. I do not think he examined the mine at all. I never knew of his being in the mine.

Q. Do not you know that he visited the mine at one time with Mr. Miller or some one else?

A. I am not sure. He might have done so, but I do not remember his doing it.

Q. Was William Hamilton's report favorable on the mine?

386 A. Yes; he seemed to think very well of it.

Q. Was Professor Thomas Price's report favorable?

(Objected to by counsel for complainant as irrelevant, immaterial, and not in cross-examination.)

A. I saw a report of Mr. Price's which was favorable, and the occasion of my writing to him was from seeing that, asking him if he still thought as he did when he wrote this, which was eighteen months or two years previous, and he wrote me that he thought his assays were too high. That, I think, was the pith of his letter.

Q. Who showed you Mr. Price's report? Was it a lengthy affair?

A. It was an old report that he made for somebody that was talking about bonding the mine. I have forgotten now who it was.

Q. Was it not made for William Hamilton?

A. I do not know but what it might have been; it is so long ago I do not know how I got it or from whom I got it.

Q. Was it favorable?

A. Yes; it was favorable.

Q. How was Mr. Charles Forman's report on the mine? What was his opinion about it?

A. His opinion was very much like my own.

Q. How is that—favorable?

A. It was favorable, together with what we saw and the information we had from Mr. Silva.

Q. What did Mr. D. L. Bliss think about it; what was his opinion about the proposition?

387 A. I think he was favorably impressed with it. I understood from him that he did not go down there with a view of buying the mine or anything of that kind, but as a matter of curiosity, with a friend of his who came out from Boston, to show him the country and show him those mines.

Q. Have you any recollection of ever having seen Frank Silva before in your life, up to the time you visited this Stirling mine?

A. No; I had no idea that I had ever seen him before.

Q. If you ever met him before you had utterly forgotten it?

A. Yes, sir.

Q. In other words, he was an utter stranger to you at the time of your visits?

A. Yes, sir.

Q. You spoke of having received a letter that Silva was sick, which letter I believe you said you had lost?

A. I think I have got the letter; I will give it to you.

Q. Your suspicions were immediately aroused when you heard that he was sick?

A. Yes, sir.

Q. Why was that?

A. I will tell you why. I put him in to run this drift as foreman under Mr. Coffin; he knew just what we wanted to do. It ran along ten, twelve, to fifteen days, and I had not heard anything; and it seemed to me in a short time they ought to have run this thirty-five or forty feet in that ground, and should be liable to get into this ore if it widened out as it went down, of which it had every ap-

388 pearance. When I left him he was a great, big, strong, stout man, healthy, rugged, and did not look to me as if he had ever been sick at all. To get this sudden news, all at once, that he had been taken sick and gone off to Lone Pine and left this work

there excited my suspicion at once. Thinks I, "There is something wrong here, or he would not have left that work." That is what I thought about it—that for some reason or other he did not want to continue that drift. That is just exactly what I thought.

Q. Are you naturally suspicious of men and mankind?

A. No, sir.

Q. Why, on such a slight occasion, did you all at once become suspicious of the man in whom you had placed such unbounded confidence and on whose statements you had so much relied as to pay out ten thousand dollars? Please explain why, on such a little circumstance as that, you became distrustful of him.

A. As I say, he was a stout, healthy man. I could not conceive that he had been taken with sickness that would cause him to go off at once; and the whole thing struck me, as I say, that he did not want to run that drift.

Q. Why were you so particular in asking Silva, at the different points, "Have you shown me all the work here; have you shown me everything here," as you have testified to; why were you so particular in doing that?

A. For this reason: This man had been working in this mine for a number of years, as I had been told. I felt
389 that he knew everything connected with it and about it; more than any man on the face of this earth. We had made no excavation; we had not put a hole in of any kind—with pick or shovel or anything—three inches deep, and we had to take the thing just as we could see it there. There are drifts running around, holes here and there, and a great many openings in the mine which he knew all about, I knew; so that was the reason I was so particular in asking him these questions.

Q. When he made his replies to your questions, at the time of your visits to the mine and up to the time you got to Carson, did you absolutely believe what he said?

A. Most unquestionably.

Q. Then why did you insist on another answer to the same question immediately before you delivered to him your check in Carson?

A. I wished to put it beyond a doubt.

Q. Why did you wish to put it beyond a doubt when you had not a doubt?

A. It was a natural protection, as a business man, when I came to pay this man a round sum of ten thousand dollars in cash, that I should take all the precaution I possibly could.

Q. You just stated that you absolutely believed and relied on what he said at the mine?

A. I did.

Q. Now, he said that afterwards, when he came to Carson, you asked the same questions again, to place the matter beyond a doubt?

A. Yes, sir.

390 Q. Then there was a doubt existing?

A. I do not mean to say there was a doubt existing; it

would not necessarily follow. I say, as a business man, when I came to pay him ten thousand dollars I wanted to have his positive say-so in the matter, beyond a question, to me. That is what I wanted and that is what I got.

Q. Do you take strangers' reports and statements of things as against your own judgment and the judgment of experts, in buying a mine?

A. It depends a good deal under what circumstances men tell things when you ask questions. There were certain circumstances surronnding him that would have their influence with me, and would, necessarily, with any one. I do not put it up that every man I deal with is a rascal, nor do I believe that every man I deal with is an angel. I do not believe in either. There is a certain course in business. This was simply a business precaution that I took with this man. I was paying him a large amount of money, and I wanted to know, as near as I could, that I was getting value received. It was a simple precaution, not unreasonable under any circumstances. If it had been any man, I think he would probably have done the same thing.

Q. If Silva did not do any secret work in that mine, then you have not been deceived, have you, in that respect?

A. If he had not done any secret work in that mine it certainly would not have added any more or less ore to it.

391 Q. Do not you know that that excavation at the point of location has been admitted by your attorney and admitted by you to have been placed there without the knowledge of Silva and to have been filled up without the knowledge of Silva?

A. No; I do not.

Q. That this little shaft at the point of location, which you claim was dug out by Silva and refilled by him, was admitted by your attorneys in the criminal action to have been dug and filled by one E. H. Edwards?

Mr. REDDY: We object to any such statement, because it is not the fact.

A. I do not. To my knowledge, I never heard of it before. I never knew about Edwards, and never heard anything about it.

Mr. MINER:

Q. Do you know who dug that shaft at the point of location or when it was dug—this little shaft at the point of location, marked "hole sunk?"

A. I do not.

Q. Have not you sworn that Frank Silva dug that shaft and refilled it?

(Objected to by counsel for complainant on the ground that the time and place when the statement was made is not given.)

A. I do not know. I cannot say without refreshing my memory.

Q. Did you not swear to that fact in the original bill in this case?

392 (Objected to by counsel for complainant on the ground that the bill must be presented to the witness and he must have an opportunity to read it or have it read to him, so that he may know whether he did or not; and on the further ground that if he did the respondent has the benefit of it; further, that the witness has already given his answer that he does not know, and it is useless to sit all day and get the same answer every time.)

A. I am not sure; I do not know.

Q. Do you know whether Frank Silva knew, himself, at the time of the purchase and sale of the Stirling mine, as stated, that this hole at the point of location had been sunk there and had been refilled?

(Objected to by counsel for complainant as immaterial, whether he knew it or not, and that if he made the statement without knowing it, it would have the same effect.)

A. When he was talking to me I supposed he knew of any work that had been done.

Q. I am asking you as a matter of fact.

A. I cannot tell that.

Q. How long were you at that point of location examining it when you were out there?

A. I dare say I was there fifteen or twenty minutes.

Q. Who was present?

A. Mr. Forman, Silva, and myself.

Q. Was not Eddy there, too?

393 A. I am not sure whether he went up there or not. I may say I lost track of a good deal of Eddy's movements, because they cut no figure with me whatever, and I have very little recollection of what he said or did or where he was when we were at the mine.

Q. I will ask you, Mr. Yerington, if the ledge or croppings of ore do not extend into this tunnel and run in a northwesterly and southeasterly direction through the tunnel at the point of location?

A. Yes; I think it does; that is my impression.

Q. Is there not a separate body of ore entirely separate and distinct from the little streak in the hole at the point of location, to which you have testified?

A. I am not sure as to that. I do not remember.

Q. Is there not quite a body of ore there at the point of location independent of this little streak which you have testified to as being in the hole and sunk down there seven feet?

A. I cannot say. My impression is that the whole of that ore there, good, bad, and indifferent, was composed of one ledge.

Q. What is the size of this little streak you have testified to in the hole?

A. I cannot remember how that was. This excavation was smoked a good deal, and I could see the galena shining occasionally, and we did not measure it. It looked like the beginning of a good lot of ore.

394 Q. That is, above the hill?

A. It cropped out at the surface. They ran this little open cut in there and cut it. I have forgotten just exactly how. It is a long time ago since I was there, and I cannot answer that satisfactorily.

Q. Now, then, we will get to the ore chamber. If there were ever any holes drilled in that chamber such as you have testified to, do you know who drilled them, of your own knowledge?

A. I do not.

Q. If you have any idea that Silva drilled them, it is a supposition based on suspicion?

A. I believe he did it, or caused it to be done.

Q. That is merely a belief of yours?

A. That is my belief.

Q. You do not know?

A. I cannot swear to it positively, because I did not see him do it.

Q. How much ore was there on the floor of this chamber when you visited it, in that pyramid? What was the highest width of the pyramid of ore that you have testified to?

A. The length of the pyramid we placed there at about nine feet.

Q. What was the height?

A. The height above the ore that was on the floor must have been five or six feet, probably, and then the length on the ledge, as we believed, running southwest and northeast, must have extended across there, if my memory serves me right, six or eight feet.

395 Q. You have spoken of the length nine feet. Which direction do you mean in the chamber that was?

A. That would run easterly and westerly, lengthways of the chamber, nine feet.

Q. Now you say running southwest and northeast six or eight feet?

A. Yes; against the wall of the chamber on the north side.

Q. At the time you visited this ore chamber it was an inclined winze, was it not?

A. The ore chamber was at the bottom of the winze.

Q. It formed a winze down which you went in on a ladder?

A. No, sir; you came down the winze, and then facing the north as I do now, we went over a little bridge, as I explained to you yesterday, and the chamber was to the right. The winze was independent entirely of the chamber.

Q. Was there not a short ladder in the chamber?

A. There was a little short ladder or ladders or something to go down from the top of this bridge and go to the bottom of the chamber on the floor.

Q. The chamber had an inclination toward the east, did it not?

A. Yes, sir.

Q. And it required a ladder to come up from the east end of the chamber to get up to the ladder to get out of the winze?

A. There were a few steps; probably five or six. I have
396 forgotten whether it was in the shape of a ladder or what it was.

Q. Did not the pyramid of ore from a portion of what is now the floor of the chamber resting on the floor of the chamber?

A. Yes, sir.

Q. As to that there was that much ore on the floor of the chamber?

A. In sight.

Q. How deep down had your men dug that pyramid of ore to get it out?

A. I cannot tell you. I was not there.

Q. Have you seen the chamber since they have done the last work in it?

A. No; I have not.

Q. Then you do not know?

A. No.

Q. But the bottom of the chamber, when you visited it, was slanting in an easterly direction and going upwards as you go to the west?

A. Yes, sir.

Q. What was the width of that chamber at that time?

A. All told, it may have been ten feet.

Q. In width?

A. In width.

Q. At the time of your visit Frank Silva had finished working the mine?

A. Yes; I think so. That is what my impression is. I did not measure it, but I think it was about ten feet.

Q. And its length?

A. Its length might have been twelve or fourteen feet from the wall on the east side to the wall on the west side. I did not measure the chamber itself. The ore body was what I did measure.

397 Q. What was the height of it?

A. The height of it must have been almost as high as this room, I should imagine. He had taken out some ore up above there, and it must have been ten or twelve feet high. I think there was a portion of it that went up to the 38-foot level.

Q. Now, I will ask you, Mr. Yerington, if you did not use that prospecting pick in extracting samples from the ore chamber during the time of your visit?

A. Yes, sir.

Q. Who used the pick?

A. Mr. Forman, principally; I think altogether.

Q. Did not you take samples off of the bottom of the chamber?

A. No, except there might have been some samples taken out of the decomposed ore that covered the floor.

Q. Was not ore taken from this pyramid of ore which stood up from the bottom?

A. Yes, sir.

Q. He took it off with his pick?

A. In many places you could take it off with your hand without any pick. I think more samples were taken out without any pick than there were with it. When the rock was hard, as in the case of

this bridge, we took the butt end of the pick—it was a little bit of an affair—and Mr. Forman knocked those pieces off.

Q. You and Mr. Forman had perfect liberty to take all the samples you wanted out of that chamber?

A. Yes, sir.

Q. At any place from which you pleased to take them?

398 A. Yes, sir.

Q. Why did you not dig down in the lowest bottom of the ore chamber if you had any doubt about the proposition?

A. One reason was, we had no tools.

Q. What was the size of this pick?

A. A little pocket pick about six or eight inches long and sharp at one end, and the other end was a butt end.

Q. How long was the sharp end?

A. Four or five inches.

Q. You could dig down four or five inches?

A. Yes, sir.

Q. That was long enough to dig through this loose dirt?

A. I think not. My understanding was that the covering of that floor was one or two feet deep.

Q. Why did you understand that?

A. That is what I understood from Mr. Silva.

Q. Did he tell you that dirt was a foot thick on that floor?

A. That was my impression—that we had that from him. It was all soft stuff, and we were walking round on it.

Mr. REDDY:

Q. Was there any other reason? Give a complete answer.

A. Mr. Silva assured us that that was the condition of that floor.

Mr. MINER:

Q. Did you or Mr. Forman dig right down in the bottom and take out samples of ore right out of the bottom of that chamber?

A. No, sir; never.

Q. Did you take samples out of the sides of that chamber?

399 A. I think we did. We knocked off pieces of ore from the rock that was standing in the sides.

Q. Why did you not believe Mr. Silva's statements about the value of the ore instead of going and having them assayed if you relied so on what he told you?

A. The reason was I wished to get a certain quantity of ore to let Mr. Miller have. In doing that he wanted a certain number of ounces to the ton and a certain percentage of lead, and he got that, beyond question, and from all the various samples, and making an average was the reason we took the surplus—to know the value of the ore by assay.

Q. Did he tell you he had a good title to the property; that he owned it?

A. I do not know whether he told me that at the mine or not; he certainly told me that at Darwin.

Q. He did?

A. Yes, sir.

Q. Why did you not believe him, then, instead of searching the records to see?

A. As a business proposition, I do not believe any one on such a matter as that.

Q. How long did you spend in the ore chamber at that time examining it?

A. We must have been in there an hour.

Q. Did you not ask Mr. Eddy to go and get another pick, so that you could examine into the chamber further and into the floor
400 in a little better way than you could with the small pick?

A. I do not remember asking Mr. Eddy; there was an old pick or shovel in the bottom of that winze, and the only use that I remember we made of that was, after examining this and during the time we were examining the chamber, that we went down to the bottom of this winze, which is five or six feet below this bridge which I am telling you about, to see the formation of the condition of things down there I believe that shovel or pick was used down there; the bottom was hard rock; we wanted something to find out the condition of the bottom of that winze, and that is what it was used for; I remember very well we used that pick or shovel as a sort of step or ladder to get out of the hole with; there was no occasion for us to use a pick or anything of that kind in that chamber unless we wanted to dig away down.

Q. As a fact, did not Mr. Eddy get a pick and dig in the bottom of that chamber, or did not you or Mr. Forman dig in the bottom of that chamber with this larger pick which he brought?

A. No; I am positive that neither Mr. Eddy nor myself nor Mr. Forman, nor any one else, during the time we were in that mine or chamber, dug anything in the bottom of that floor on that chamber; I am absolutely positive about that.

Q. Did it occur to you at the time to dig down in the bottom of that chamber for the purpose of satisfying yourself whether or not there was ore there?

401 A. I had a talk with Mr. Silva about it; it did not occur to me to do it.

Q. Was the entire floor covered up with debris?

A. Yes; there was no place that I know of at all but what was covered.

Q. This pyramid was a part of the floor, was it not?

A. This pyramid came up from the floor; the ore from the pyramid was decomposed ore, very rich, very heavy in lead; it fell away from the pyramid on the floor and was filled in in that way.

Q. The base of the pyramid was part of the floor?

A. The base of the pyramid would be part of the floor, or resting on it, or go on below it.

Q. How much of the floor, then, was in ore?

A. I do not understand you.

Q. If the bottom of the pyramid was a part of the floor, then on

that part of the floor was ore; the pyramid came right up from the floor?

A. The pyramid came up through or rested on the floor; we could not tell.

Q. That was ore; you could tell that?

A. The outside of the pyramid was ore, and very rich ore, and that which was on the floor was rich ore; that was evident to any one.

Q. There was a little excavation in the corner of the ore chamber. Did you notice that excavation on your visit?

A. No; I could not see it at all.

Q. Did you not go down in that and take samples right
402 out of the edge of it?

A. No; there was no hole there at all; it was all covered up.

Q. Do not you know that even to-day on the north side of that chamber is a body of ore?

A. No; I do not know it.

Q. Do you mean by that to say it is not there?

A. I doubt it very much.

Q. You will not swear it is not there?

A. I will not swear it is not there, but from information I have had I doubt it.

Q. Do not you know that that ore extended some way down in that little shaft? Do you know anything about the condition of the chamber at the present time?

A. No; I do not; only from hearsay; that is all.

Q. At the time of your visit was there not a connection between the ore chamber and the 38-foot level outside of the winze itself? Was there not a hole passing up through in the northwest corner of the chamber, up into the 38-foot level?

A. I think there was. The floor of the 38-foot level was covered, but in standing down in the chamber and looking up there had been ore taken out, and I think he told me some thirty or forty tons had been taken out up to the 38-foot level.

Q. Could you not at that time trace ore from the ore chamber clear up into the 38-foot level?

403 A. I think when we were in there that we could see ore up there.

Q. Did you not trace it up with your lights?

A. You could stand there with your light and could see sixteen or eighteen feet.

Q. Then when you came up out of the ore chamber, up onto the 38-foot level, and walked down towards winze No. 1, did you not notice a body of ore on the right-hand side of the 38-foot level?

A. Yes, sir.

Q. And overhead?

A. Yes, sir.

Q. And followed it clear around until you got to the turn that the level made towards winze No. 1?

A. I think all along here there was ore, and we took samples of it.

Q. And had not stopes been made in the western roof of the 38-foot level, going down towards the west?

A. Yes, sir.

Q. In which stopes there existed ore?

A. We found a large excavation at the point you speak of, and Mr. Silva told us he had taken out a large quantity of ore there. My impression now is that he told us he took out some two hundred or three hundred tons there. We went in and examined it, but we could not find any ore in there of any consequence. It seemed to have run out.

Q. Was there any ore there at all?

A. There was very little. It seemed that he had taken out
404 all the ore there was in that chamber that was worth taking out.

Q. I will ask you if it was not one continuous streak or strata of ore from this ore chamber, extending up into the 38-foot level and as far as you could trace it in the end of the drift running off in the 38-foot level west?

A. My memory is that there was an ore chute in this northwest corner out of which he had taken thirty or forty tons of ore, as he told me, and that seemed to be all the ore there was up in that direction. Then, when we got up into the 38-foot level and went towards winze No. 1, the ore seemed to come in fifteen or eighteen feet from winze No. 2, where we first commenced taking the samples.

Q. Do you remember where there was a hole called the "Modoc hole" on the 38-foot level?

A. I do not remember that hole.

(Recess to two o'clock p. m.)

405 *Afternoon Session.*

H. M. YERINGTON recalled.

Cross-examination continued by Mr. MINER:

Q. On that visit did you have the privilege of going anywhere you pleased in that mine?

A. Yes; I think so. I followed Mr. Silva; he went there to show us the mine, and I followed him wherever he took us.

Q. You could see places where work had been done on the mine, both on the surface and below the surface of the ground?

A. Yes.

Q. Did you not also direct Silva where to take you?

A. Upon my word, I do not remember; I do not remember ever directing him. I asked him if this was all he had to show, and where else were we to go, and all that sort of thing, which would be natural. He might have had openings and places I knew nothing about unless he took us there. I had never been there before.

Q. Do you remember going in the western branch of the main tunnel?

A. Yes.

Q. Marked on the map as "westerly branch of main tunnel?"

A. Yes.

Q. Was there not a streak of ore and ledge matter on both sides of that tunnel until toward the end it entirely pinched out?

A. I think my memory is that there was a streak of ledge matter carrying iron, and that there was no ore of any consequence worth talking about in that tunnel, except at a point here very
406 near the end, on the right-hand side as it took that turn.

Q. Had not that drift been run in on some kind of ledge matter containing some streaks of ore in it?

A. What I thought about that was this: The croppings that were shown and the ore which was shown at tunnels "A," "B," and "C"—that that ledge went on down and this tunnel was run to cut it and it pinched out at that point. There was nothing below that tunnel.

Q. Was not on both sides of that drift, both on the upper left-hand side and down on a corresponding angle on the right-hand side near the floor, a streak of ledge matter showing the drift had been run on that streak clear up to the end, where it plainly pinched out?

A. I should imagine that he ran that drift on for that purpose, and that that was, as I tell you, the total end of the ore as it appeared on the surface.

Q. Was not the end of the tunnel entirely cleaned out so as to show clearly and plainly that the ore had been pinched out and no attempt to conceal that at all?

A. I remember one place in that tunnel where it was walled up with stones and rough rock, quite a large opening into the tunnel, and Silva told me he got a bunch of ore out of there and took all the ore there was in it, and I did not attempt to take the wall down or ask him to do it or anything else.

Q. That was in the side of the drift?

A. Yes.

Q. At the end of the westerly branch of the main tunnel did not the ore pinch out, and was not that plainly to be seen?

407 A. Yes; the end of that tunnel was in line; no ore or anything else.

Q. When you asked Silva if he had shown you the works it was a general question?

A. Yes; I wanted to know if he had shown me the whole mine.

Q. What did you mean by that—drifts, tunnels, cross-cuts, and everything?

A. Yes; everything connected with it.

Q. You did not want him to show you every drill hole in the mine?

A. No; I do not suppose I did, unless he had gone and drilled some holes to ascertain whether ore was there, and all that sort of thing, but if he ran a drill hole without any particular reason I did not.

408 Q. When did you first hear about drill holes being made in this mine?

A. The first news I got of it was in a letter from the superintendent, Mr. Coffin.

Q. Have you that letter?

A. Yes.

Q. I would like you to produce it.

Mr. REDDY: We will hand you the letter if you say you desire it for the purpose of putting it in evidence in this case and not for the purpose of inspecting our correspondence.

Mr. MINER: I do not propose to offer a paper written by one of the parties interested about a matter which the defendant knew nothing and had no chance to contradict and no chance to deny, and which, it seems, led to his arrest, and with which he has never been confronted, and never given an opportunity to deny it.

Mr. REDDY: Cannot you say you want it for the purpose of determining whether you want to use it as evidence in this case?

Mr. MINER: I would like to see it for the purpose of determining whether it has any connection with or bearing on this case. I do not want to see it out of any curiosity.

Mr. REDDY: There is the letter (handing). We offer the letter referred to by the witness and demanded by counsel in evidence.

(The letter is marked "Complainant's Exhibit No. 7," and is as follows:)

409 "The Southern Development Co. of Nevada.

"STERLING MINE, INYO CO., CAL., 25*th April*, 1884.

"H. M. Yerington, Esq.

"DEAR SIR: I have adopted the plan of working advised to Mr. Ford to-day, because I cannot take out such ore as is wanted in quantity. The last taken out was galena, & I supposed I could bring up the average of what I have on the dump with this, but could not get any of it above 20 oz., so concluded you would sooner have the ore left in the mine than extracted, if not above that figure. So far, wherever I have taken down ore, have found it to be a bunch, or the ledge small and broken quartz mixed through it, etc; also have found over a dozen drill holes, by which means the ledge had been sampled thoroughly.

"Came to the conclusion I had better leave than ship ore I knew would not pay, so asked to be relieved on the 23rd inst., two days after I got to assaying & found out how the ore was going.

"Yours very truly, H. W. COFFIN."

(Counsel for the respondent objects to the introduction of the letter on the ground that it is hearsay evidence and is irrelevant and incompetent and immaterial, not tending to prove any issue in this case, being statements made outside of the presence of the defendant and
410 which he had no opportunity to contradict or deny, and not being any evidence that the defendant committed any fraud in the sale of the mine; further, no proof has been made or offered identifying the said letter as having been written by any person.)

Q. After receiving that letter what did you do? I mean in connection with this transaction.

A. I immediately arranged to go to the mine without loss of time.

Q. Did you get there?

A. Yes.

Q. What did you do when you got there?

A. I immediately saw Mr. Coffin, and we went into the mine then to see the condition of it.

Q. I want what you did; not what other people told you, unless the defendant was present.

A. My memory is that I went in with Mr. Coffin and went down the winze marked on the map No. 1; then we started from the bottom of that winze to go to this drift that had been driven to get under the ore chamber that was at the bottom of winze No. 2 on the map. We got to the end of that drift, and there I found an upraise of some twenty or twenty-five feet in height, and crept all through that; saw no ore at all excepting an iron stain, and got into the ore chamber. I think that this winze connected with this little shaft which was sunk in the ore chamber, and we came up through that. When I got into the chamber I looked round and could not see any ore that amounted to anything. I think that I saw one or two stubs on the beginning or bottom of some drill holes around where
411 this pyramid of ore had stood when I was there first.

Q. When you went into the ore chamber at that time did you not see a body of ore on the north side of the little shaft you have mentioned?

A. I saw no body, but I might have seen a small bunch.

Q. Do you know how far down into the ground that bunch extended?

A. No; but my judgment was it was superficial.

Q. Did you see any ore on the north side of the chamber?

A. I think not, except a little on the walls; those little patches of bright galena ore that would attract your attention with a candle; they seemed to be plastered on the line walls of the chamber.

Q. Can you swear positively to what extent those patches on the wall extended in a north direction into the side of that chamber? Can any man state that?

A. I do not say I could. I might say this: Frequently between the patches you could see the white lime. In other words, to explain that, the way those walls looked was like flowers on the usual wall paper on a white ground.

Mr. REDDY: Was it as thick as that, as flowers appear on the usual wall paper?

A. I might say it was evidence to me there was no ore there.

Mr. MINER: Did you not also at that visit see ore extending up from the chamber clear up into the thirty-eight-foot level?

A. I think not; I think that ore, to all intents and purposes, was taken out, with the exception of a few little bunches here and there.

412 Q. Did you take any samples of the ore remaining?

A. No.

Q. Did you prospect it in any way to see how far it extended?

A. Not specially.

Q. Did you take any of it down at all on that visit?

A. I do not remember that I did. I talked with Mr. Coffin and Mr. Price as to the ore that they had taken down and the situation. The whole situation in that ore chamber was that under no circumstances did I believe that there were five tons of what you call ore.

Q. Were there as much as five tons of ore?

A. I doubt that very much.

Q. Was there as much as four tons of ore?

A. It is very difficult for me to tell that, but I do not believe it exceeded five tons under any circumstances.

Q. Whatever was there do you or any mortal man know the extent of it—how far in a northward direction or downward direction that ore extended?

A. I did not believe it extended down at all, for the reason that this winze coming up did not show any ore in the winze.

Q. Could it not go in another direction?

A. It could not very well.

Q. Could it not possibly do it?

A. It was a possible thing, but not a probable one. It was not any way probable. I might say in connection with this that I wanted to find ore as bad as any one. I did not want to go there and not find it. I preferred to find it if I could, by a long way. I had every reason for that.

Q. Before purchasing this mine did you have any consulta-
413 tion with your associates?

A. Yes.

Q. With whom?

A. By telegraph with D. O. Mills, in New York, one of the principal owners, and with the other owners in San Francisco—Mr. Sharon, Mr. Bell, and all the rest of them.

Q. Did they instruct you to have any expert examine the mine?

A. No; they did not. I told them that under all the circumstances in the way the thing appeared to me and the information I could get about it that I wanted to take the property. He told me "all right," to go ahead and do so.

Q. Did you tell them that Mr. Forman had examined the mine at your request?

A. I think I did.

Q. Did you tell them he had examined the mine twice?

A. No; I do not think I said that.

Q. Did he not examine it twice?

A. He was there twice, I believe.

Q. Whose judgment did your company mainly rely upon in the purchase of that property?

A. The company relied on me a good deal in that matter, as they do in all our business. I have managed the whole business from the day of the incorporation. I have bought large quantities of land and sold large quantities, and I have done everything con-

nected with it and made large contracts and paid out a great deal of money—several hundreds of thousands—and yet I have had no fault found with anything I have done. Everything I have done has been confirmed.

Q. Did they confirm the procedings that you have taken
414 in this case?

A. Yes; in every way.

Q. In the prosecution of Silva?

A. In the prosecution and everything connected with it.

Q. Did not your company rely on the judgment of Mr. Forman to a great extent?

A. I have told you they relied on my judgment, on my say so; that I, as a business proposition, would get all the other information from Mr. Forman and every one else that I possibly could.

Q. Did you not rely also on Mr. Forman's judgment to a great extent?

A. Certainly.

Mr. REDDY: Be careful what you say; do you mean to say you relied on Mr. Forman alone?

A. No; he asked me if I relied on his judgment. I did not, alone.

Mr. MINER: You state that you wrote to your company what Mr. Forman thought of this property; did not you do that so his report would influence them in buying the property?

A. In representing to them that Mr. Forman had examined that property I simply did it to sustain my own opinion and other information that I had received.

Q. Now, who induced that company to buy that property—you or Frank Silva?

A. I did; Frank Silva never saw a member of the company, to my knowledge.

Q. Then, in inducing your company to purchase, you told them the statements that others had made to you besides Silva's
415 statements?

A. I told them Mr. Forman had examined the mine.

Q. You told them other people had, too?

A. I think I did.

Q. This Mr. Bliss who visited that mine was one of the incorporators of that company?

A. Yes.

Q. Was he an officer?

A. Yes; he was a vice-president.

Q. Did not his examination and report also influence that company in making the purchase?

A. From what he could see there it coincided with what I saw and what every one else could see that went there.

Q. Was Mr. Bliss an officer of this company?

A. Yes.

Q. What officer?

A. Vice-president.

Q. At that time I mean.

A. He was vice-president.
Q. Director and vice-president?
A. He was then.
Q. In what way were you authorized to make this purchase for the company?

Mr. REDDY: You have already admitted he was president and managing agent of the company. The articles show it was the business of the company to buy such property. The managing agent has certainly the right to manage the business of the company. The business of the company was to buy and sell.

A. To prove that I have been doing it for the last four years, both buying and selling, and every act has been confirmed by
416 the company.

Mr. MINER: How do they confirm it?

A. By not protesting; by acquiescing and carrying out every arrangement I made with everybody. The very fact of paying this check for ten thousand dollars, which I drew and signed myself, would be proof of that. I bought for that company, without a word from anybody, fifteen thousand acres of land.
Q. Did you also inform your company that you had received the report of Mr. Price on this property?
A. I think I had advised Mr. Mills that I had done so; I do not think I said anything to any one else.
Q. The statements that these gentlemen whom you have mentioned—Mr. Bliss, Mr. Woods, and Mr. Forman—made to you all influenced you more or less, did they not?
A. They all thought well of the property, and of course if men in the country came to me and told me it was not worth a cent and stuck to it it might have had its influence in that way.
Q. What did Mr. William Hamilton tell you about the property?
A. He was favorably disposed towards the property. I did not think his judgment was good for anything, because he was not a miner, but he told me what I understood from him and others that he wanted to bond this property with a view of selling it for an advanced price, acting as a middle man.
Q. When you made this visit to the mine and examined it, as you have stated, this last time did you conclude then to arrest Silva for fraud?
A. When I went in there?
Q. Yes.
A. Yes.
417 Q. What time did you make up your mind to arrest him?
A. I had not been in that chamber five minutes.
Q. Did you do it upon the statement of what some parties there told you?
A. I did it on what they told me in regard to work that was done in the mine, and what I saw myself.
Q. It was all in regard to these drill holes, was it not?
A. Largely so.
Q. What else was there besides the drill holes?

A. There was no ore there that he represented to me in the first place; no two thousand tons, and no one thousand tons.

Q. When he made the statement to you that there were two thousand tons did not you know, and do not you know now, it was the mere expression of opinion?

A. It was a very strong opinion of his. He insisted as much as a man could insist that it was so.

Mr. REDDY: Answer that question.

A. He stated it to me as a statement of fact.

Mr. MINER: When you told him there was not but one thousand did you state that as a statement of fact?

A. I stated as a statement of fact that I did not believe there was over one thousand.

Q. Do not you know that men will express ideas of that sort, and it is nothing more than an opinion?

A. It depends if a man wants to sell a mine.

(Counsel for the complainant objects to the testimony as — what men do, and wishes to confine the matter to what these men did.)

Q. Did not you and Silva discuss the quantity of ore in
418 that mine and express an opinion one way or the other about it?

A. We did discuss it.

Q. You gave your opinion on it?

A. Yes.

Q. He gave his?

A. Yes.

Q. Did you take that opinion as an absolute fact at the time?

A. As I have told you, I doubted that there was two thousand tons of ore in that mine.

Q. You stated yesterday that he said there were five hundred tons of ore in the chamber; did you take that as a statement of a fact or an expression of an opinion?

A. I took it as a statement of a fact.

Q. Did you not know better right at the time?

A. I did not.

Q. Did you believe there were five hundred tons in the chamber from what you saw?

A. From the appearance and what he told us in regard to the floor of that chamber, and from the appearance round there, and from the character of ore we had, that there were five hundred tons of ore there.

Q. Right in that chamber?

A. Right in that chamber.

Q. You could see what there was in the chamber?

A. No; I could not see what was in the chamber, because the floor was covered with a foot or two feet of ore. He stated most positively to Mr. Forman that that floor was all ore, and it was fully as good, if not better, than that which we saw.

Q. Which way did you expect the ore to go to get the five
419 hundred tons?

A. In every direction, except in going up, because that had all been chambered out, and that I could see.

Q. Was there any ore on the south side of that chamber?

A. Where the winze was?

Q. Yes.

A. The winze itself showed ore in nearly the whole of the four walls at the place we got off to go over the bridge—a very fine character of ore.

Q. Did Silva say there were five hundred tons, or he thought there were five hundred tons?

A. I cannot remember whether he said he thought so or anything he said of that kind; but his assertion to me was that there were five hundred tons there, and I thought there was myself.

Q. Then you both might have been deceived, might you not?

A. Of course we might have been deceived, but he knew better when he told me that.

Q. How do you know he knew better?

A. That is just exactly what I am thoroughly satisfied of, that he did know better.

Q. Do you know as a fact now that he drilled a hole in that mine that you found there?

A. I do not know as a matter of fact that he himself with his own hand made a drill hole in that mine. I am thoroughly satisfied, and never have had a doubt since I knew about this, that he knew that that body of ore was not what he expressed himself when he spoke to me of it in that chamber.

420 Q. Did you ever drill a hole in a mine to get samples for assay?

A. Never.

Q. Did you ever use the drillings of holes to assay it?

A. Such things have been done.

Q. You never knew it to be done?

A. I never did it myself. That is usually done by a diamond drill.

Q. Did you have any diamond drill there?

A. There was no diamond drilling in that mine. Sometimes it is done by a burleigh, and they have not any of those there.

Q. Now, then, at the time you brought this suit did you know anything about this shaft at the point of location having been dug and filled up again?

A. No; that was discovered afterwards.

Q. When did your company discover the fact that this shaft had been dug here at the location point and filled up again; at what time?

A. It must have been a very short time after I was there on the 1st of May, because I went up there with Mr. Coffin and Mr. Price, and we decided to sink there.

Q. It was after you instituted this civil suit?

A. I was there on the 1st of May, and I do not know the date that they sunk there.

Q. You swore to that complaint; you can tell whether it was before this suit was brought—before you made that affidavit or afterwards (handing copy of the complaint filed May the 8th, 1884, to the witness)?

(Objected to by counsel for the complainant as immaterial, irrelevant, and not in cross-examination.)

421 A. I cannot tell; I do not know.

Q. Was it before or after the beginning of the criminal proceedings against Silva?

A. It was after the proceedings.

Q. Then, if the criminal proceedings and the filing of the complaint in the civil action occurred on the same day, it was subsequent to the beginning of the civil action that you discovered that shaft?

A. I cannot answer that question.

Q. You do not know whether it was after or before?

A. No; I cannot tell, because I do not know what day Mr. Coffin and Mr. Price sunk it.

Q. Sunk what?

A. Cleaned out that shaft.

Q. What day did you leave the mine on that visit?

A. Assuming I was there on the 1st, I left on the 2nd. I stayed there all night.

Q. Did you go back to the mine before you instituted this civil action?

A. After that.

Q. After that?

A. No; I do not think I did.

Q. Then you brought the civil action immediately upon your return from the mine on that visit?

A. After I came back from Carson I went down to Independence, and in a day or so—the 7th or 8th of the month—that suit was brought.

Q. Did you know at the time you left the mine on that last visit that that shaft had been sunk and filled up again?

A. I do not know.

422 Mr. MINER: Could you not tell when you left the mine whether that place was dug open or not?

A. At the time I left there it had not been.

Q. Now, did you hand or tender to Frank Silva a deed of this property at any time; if so, when?

A. Down at Keeler, in the railroad office. I do not remember the day now. General Clark was there and Mr. Conklin was there.

Q. Was it a written deed or a printed deed?

A. A printed form filled in.

Q. Did you write it out?

A. I do not know whether I wrote it myself or whether Mr. Ford

wrote it. We have printed forms and are making a great many deeds. Sometimes he does it.

Q. Who was present when you handed it to him?

A. Mr. Conklin and General Clark were both in the office at the time.

Q. That was subsequent to the bringing of both actions, criminal and civil?

A. I am not positive about that.

Q. You first went to Independence to get out papers for the arrest of Silva before you went to Keeler?

A. Yes.

Q. How long did you stay there?

A. I think we stayed there one night, and then the next day we went to Keeler.

Q. Had the sheriff gone ahead of you?

A. Yes.

Q. The papers had been issued for the arrest?

A. Yes; and that evening that we got there—we got there
423 during the day some time—the sheriff came down with Silva, and we all went into the railroad office ourselves without any other person.

Q. Cannot you remember whether at the time you got out the warrant for the arrest of Silva that you did not then and there have Mr. Conklin draw up a complaint in the civil action against him?

Mr. REDDY: That will speak for itself. Mr. Conklin will be able to state whether that suit was commenced before they made this demand. He was present at the demand.

A. I cannot tell.

Mr. MINER: What did Silva say at Keeler when you charged him with having drilled this mine?

A. He did not deny it.

Q. He did not deny it?

A. No.

Q. Did you not testify on the preliminary examination of Frank Silva on the criminal charge that he did deny all knowledge of the drill holes and deny that he had drilled those holes?

(Counsel for the complainant objects to the witness being asked the question without he is presented with the testimony given by him at that time and his attention called to the place where he gave such testimony.)

A. I do not remember his denying anything of the kind. I do not remember testifying of the kind.

Q. Did not Silva, at Keeler, Inyo county, on or about the 8th or 9th day of May, 1884, in the presence of Dan Crow, the dep-
424 uty sheriff, deny absolutely and positively that he ever drilled the holes in that mine referred to and mentioned by you, and which you charged him with having drilled at that time, and so deny it in the presence of the said Dan Crow?

A. I do not remember his ever having done anything of the kind.

Q. Do you remember, at said town of Keeler, at said date, about said time, that you threatened and told Silva that you would send him to the penitentiary for ten years if he did not give up that certificate of deposit to you?

A. I do not remember just what I did say to him about that. I know I was very much exercised about this matter. I felt that he had outraged me most awfully.

Q. I do not want that. I want a direct answer to the question.

A. (Continuing.) And I talked very severely to him; had quite a lengthened conversation, and I cannot remember everything that occurred. I do not remember that I made that assertion. I think that I told him that I certainly should prosecute him to the full extent of the law. I am sure I did tell him that.

Q. Do you remember at that time telling him that you would send him to the penitentiary?

A. I might have told him so, but I do not remember.

Q. Then there is a great deal about this thing that you do not remember?

A. At this time, yes; it is two years ago, and I cannot remember everything that occurred from time to time.

Q. Then there is something that you have forgotten; is not that so?

425 A. It may be, possibly.

Q. And you may have stated something that did not happen because you do not remember it?

A. I am refusing to say things because I am not sure that it did happen.

Q. It is not possible that you could state anything that did not happen on the ground of a bad memory?

A. It is possible.

Q. You might have done it in this case?

A. I am endeavoring to tell as near as I can the truth in this case, and I do not propose to do anything else if I can help it.

Q. Your memory is not first-class?

A. Well, yes; I think my memory is pretty good. I have got a good many things to think of and in the course of two years it probably would amount to a great many thousands, and when I get through with a piece of business, without it is something that impresses itself very strongly on my memory——

Q. You testified in the criminal case against Silva in the preliminary examination?

A. Where?

Q. At Independence.

A. Yes.

Q. Do you remember testifying in that case about Silva denying about these drill holes?

A. I do not remember that he ever denied it to me at all.

Q. Do you mean to claim that Silva admitted drilling all these holes in that ore body to you?

A. I do not mean to claim it.

426 Q. Do not you know that he has denied it time and time again?

A. No; I do not know he has ever denied it.

Q. Do you mean to swear positively that he never denied it at Keeler when you charged him with it, or do you mean to swear you do not remember his denying it?

A. I do not remember his denying it. I will say this further, that when I accused him of drilling these holes and asked him why he did it or had it done he told me it was done in the way of mining; that is what he told me.

Q. Did he not tell you this: "If there are any holes there drilled I drilled them in the legitimate way of mining?"

A. That is not the way he answered my question.

Q. Might he not have said it that way? Will you repeat the exact words he used after two years of time?

A. There was a piece of chalk or something of that kind on the counter. I marked out on the floor a little diagram and I said, "Why did you have these drills done?" He told me that he did it in a mining way, of course, intimating to me that he did not do it for the purpose of ascertaining whether there was ore there or not, but in the course of mining; that was the answer he made to me.

Q. Who was present at the time?

A. General Clark and Mr. Conklin.

Q. Was not Dan Crow there, too?

A. He was not. I turned every one out of that office, the clerk and every one else, and that conversation occurred when we were alone.

427 Q. Did not Silva state this to you at that time: "Mr. Verington, I never drilled any holes there of that kind, but if there are drill holes in that mine that I drilled I drilled them for mining purposes—legitimate mining business?"

A. No; he did not answer me in that way. I state to you what he said. I said to him, "Why did you say there were two thousand tons of ore in that mine when there are not anything of the kind?" He said, "I insist on it; there was and is two thousand tons of ore in that mine." That is the very conversation.

Q. At the time you met Mr. Silva at Keeler on this visit he had been already arrested and was then in the custody of the sheriff of Inyo county under this charge made by you for obtaining this ten thousand dollars under false pretenses; was that so?

A. Yes.

Q. That was the first time that you ever offered to rescind this contract of sale or to give back this property and take that money?

A. Yes.

Q. You arrested him first and then went to him to compromise?

A. No, sir; not to compromise.

Q. Was this a compromise that you offered Silva?

A. No.

Q. What was it?

A. I said to him, "You give me back this money that I have paid

you; you have done these things; you have deceived me; we have spent five thousand dollars on this property; it is utterly worthless, and you knew it when you did this thing. I paid you ten
428 thousand dollars. Now, sir, I want you to give me back that ten thousand dollars; take this property, and you can have the improvements and everything else that cost me five thousand dollars, if it — as good as you say it is, and you say it is a first-class mine to-day." He refused it. He said, "I will not do it."

Q. What did you say about the criminal proceedings against him?

A. As I said before, during this conversation that I speak of now, when I made this offer, he stood with his back to the window up towards Darwin—the south window. I am not sure that Mr. Conklin was in the room at that time; General Clark, I know, was. The door was open going into the warehouse and they were wandering backwards and forwards. We were there a long time. Silva stood with his back to that window. I stood right up facing him, and I am pretty sure I told him that we would prosecute him to the full extent of the law.

Q. If he did not accept the proposition what was to be done about the criminal action?

(Objected to by the counsel for the complainant as not being cross-examination and as irrelevant and immaterial.)

A. I proposed to let the law take its course; that was all there was to it.

Q. Did you propose to him to drop the criminal action and everything if he would give you back the money and you gave him back the property?

(Objected to by counsel for complainant on the same ground as to the last preceding question.)

429 A. The idea was that if he accepted the proposition that ended the whole thing right there.

Q. It settled the whole business?

A. It settled the whole business.

Q. And on the same day, a little further on, on the railroad, you made the proposition that if he would give back the seventy-five-hundred-dollars certificate of deposit then you would drop the criminal action and everything else and give him back the property?

A. When he refused we walked out and made the arrangement to go away. General Clark, Mr. Conklin, and myself got into my car; the sheriff and Silva and one or two other men rode out on the flat car, and we came on to Inyo. On our way up I thought this matter over and came to the conclusion that he had spent the two thousand dollars in coin that he got here at Wells-Fargo's and could not give it to me; that I was asking a thing he could not do; so I spoke to Mr. Conklin and to General Clark, and I said: This may be the case. I will make a proposition: If he will give me back that certificate of seventy-five hundred dollars that will end the whole business. They said it was a good thing; so when we got to Inde-

pendence I got off the cars there, and at the corner of the office I made the proposition to him to take the seventy-five hundred dollars. I told him I would give him back the property and everything intact, and he to give me the certificate for seventy-five hundred dollars. He said, "No," he would not do it; he would
430 go to jail; that ended it; that was the last conversation I had with him about it.

Q. Does the Southern Development Company own the property described in the complaint or bill in this action at the present time?

(Objected to by counsel for complainant on the ground that the question is immaterial, irrelevant, and not in cross-examination.)

A. I know nothing to the contrary except by hearsay.

Q. What did you hear?

(Counsel for the complainant objects to hearsay testimony.)

Mr. MINER: I will withdraw the question.

Q. Is the Southern Development Company of Nevada in possession of this property, or any portion of it, at the present time?

(Objected to by counsel for complainant as immaterial, irrelevant, and not in cross-examination.)

A. The Southern Development Company has no man in charge of the property.

Q. Do the Southern Development Company of Nevada claim that property, or any part of it, as its own?

(Objected to by the counsel for the complainant as not being in cross-examination and as irrelevant and immaterial.)

A. I do not know what the company considers about that.

Q. Are you not one of the directors at the present time?

A. Yes. The question has never been discussed by the company, to my knowledge.

Q. Do you not know and have you not heard that this mine was attempted to be relocated last January?

431 (Objected to by counsel for complainant as immaterial and irrelevant and calls for hearsay as well as knowledge.)

A. Within the past month I have heard that a man by the name of Wilson had relocated the mine. Whether it is true or not I do not know.

Q. Did you, during this month or last month, or did the Southern Development Company, or you acting for them, notify Mr. Wilson not to admit me or any one else in that mine for the purpose of examining the same?

(Objected to as not being in cross-examination and as immaterial and irrelevant.)

A. I know there was a communication sent to Wilson under the signature of Mr. Reddy to the effect not to allow you or any one else in that mine if he could help it.

Q. Did the Southern Development Company of Nevada do any assessment work upon these mining claims mentioned in the pleadings in this action since it has had them; if so, when?

(Objected to by counsel for complainant on the ground that it is immaterial, irrelevant, and not in cross-examination.)

A. I would like to know for what year.

Q. You can state all you know about it.

Mr. REDDY: If you do not know anything about it say so. Give your own knowledge and not what you heard.

A. There never was any assessment work that I am aware of done on the claims adjacent to the Stirling mine, mentioned in the pleadings as Stirling No. 2, and the Vasco. The only work done in the Stirling mine, to my knowledge, was done in the way of taking out the ore and developing the mine.

Mr. MINER: Has the Southern Development Company of
432 Nevada abandoned those claims or either of them?

(Objected to by counsel for complainant on the ground that it is immaterial and irrelevant, and that that is a question which can be passed on only by the corporate authority, namely, the board of directors.)

A. The Southern Development Company, to my knowledge, has taken no action on the matter whatever.

Q. Are you not at the present time in fact the acting agent and manager of that company?

(Objected to by counsel for complainant as immaterial, irrelevant, and not cross-examination. It makes no difference who is the managing agent at this time. The witness has already said he has resigned from the office and another man was in his place.)

A. There has been another president elected in my place, and since my resignation I have had no appointment as acting agent.

Q. Do you not still act, notwithstanding the fact that you have had no further appointment?

(Objected to by counsel for the complainant as immaterial, irrelevant, and not in cross-examination; and, further, that the witness has repeated the answer that he has resigned and another person appointed in his place and he holds no appointment or authority from the company to act.)

A. I might act and I might not, as I saw fit.

Q. Do you or not act now, and have you not acted since your resignation as president of that company, as the agent of said company?

433 (Objected to by counsel for complainant as irrelevant and immaterial, and counsel would like to know if the question is not being put for the purpose of finding evidence to be used in another suit, and if it is not being asked not to make evidence in this

case, but to use it in an action for damages against the company to get such evidence as will enable him to get jurisdiction of the company in that suit.)

(Counsel for the respondent moves to strike out the question about his object in answering the question, as his objects and motives are of no consequence in determining this suit; further, that he is endeavoring to show the interest that this witness has in this matter and his connection with the corporation, also to show that he still acts for the company, although he may not be its president, and if counsel derives any benefit, directly or indirectly, in the course of this case that will be of benefit to his client in any other cause on hand he would deem it his bounden duty to communicate the same to his client, and to take any and all proper and legal advantage of the same in this case and all others.)

A. I have advised the president in regard to some old transactions with which I was conversant, and no one else, what action I thought ought to be taken in the matter. I as trustee have advised that so and so should be done. There has been no new business whatever that I am aware of done since I resigned as president.

Q. Up to the time that you resigned the presidency of this company was or was it not your duty to protect and to pre-
434 serve the rights of the said company of, in, and to all of its property, and particularly the property mentioned in the pleadings of this case?

(Objected to by counsel for the complainant as immaterial, irrelevant, and not cross-examination.)

A. I consider that while president of that company it was my duty to protect the property in the interest of that company in every case while they were worth protecting, in my judgment.

Q. I will ask you whether the Southern Development Company of Nevada had abandoned the Stirling mine mentioned in the pleadings up to the date when you resigned as president?

(Objected to by counsel for complainant on the ground that it is irrelevant, immaterial, and not cross-examination; that the question has been answered several times, and on the further ground that the board of directors are the only parties who can convey or abandon the property owned by the corporation.)

A. I have already stated that the company as a company have taken no action in the matter, to my knowledge.

Q. Did it claim the property up to the time that you resigned as president? You ought to know that.

(Objected to by counsel for complainant on the ground that the question has been several times answered, and it is for a board of directors to assert its claims to its property, and that the action of the president could not make a claim or abandon one belonging to a corporation.)

A. Up to the time that I resigned as president I am not
435 aware that any occasion arose why the company should claim or disclaim that property. When that time comes they will act.

(A recess was taken until to-morrow morning at 9 o'clock.)

436 THURSDAY, *June 10th*, 1886.

Counsel and parties met pursuant to adjournment.

H. M. YERINGTON recalled for further cross-examination.

Mr. MINER:

Q. When did the Southern Development Company withdraw its men from that mine?

A. Our accounts and books show that the men left on the 5th of April, 1885.

Q. The last man?

A. Yes.

Q. Did the Southern Development Company do assessment work upon that mine for the year 1885?

(Objected to by counsel for complainant as immaterial and irrelevant.)

A. The company did work on that mine in 1885.

Mr. REDDY: State your knowledge.

A. My knowledge is that we had men there in January, 1885. The character of work they did I do not know, for I was not there.

Mr. MINER:

Q. Who sent those men there—you?

A. Yes.

Q. You had full control of it?

A. At that time.

Q. Have you not the full conduct and management of this case for the Southern Development Company?

(Objected to by counsel for complainant as not being cross-examination and as immaterial and irrelevant.)

A. I have to that extent, as a trustee.

437 Q. Do not you know more about this case than any member of your company?

(Objected to by counsel for complainant as immaterial and not in cross-examination.)

A. I think I do.

Q. Has not the whole matter been put into your hands by the company to attend to?

(Objected to by counsel for complainant as irrelevant and immaterial. The witness has already answered and stated that he is nothing but a director, and is not president or managing agent; that he

has resigned and another is in his place. He has stated that in some matters he has given advice.)

A. From my former position in the company and my knowledge of the case, being still a trustee, I will advise and do all in my power to see the case carried to a conclusion. That is the situation I occupied exactly.

Q. Who manages this case for your company, you or some one else?

(Objected to by the counsel for the complainant on the ground that it is immaterial, irrelevant, not in cross-examination, and that the record shows that the case is being managed in court by attorneys, and the witness has already answered how the business of the corporation is and has been managed and his position in and his relation to the business of the corporation.)

A. The case is in the hands of the company's attorneys, and I do not know that there is any management required on my part, but I would aid those attorneys all I possibly could.

438 Q. Do you call that a direct answer to my question?

(Counsel for complainant objects to the question upon the ground that the court will be the judge as to whether it is a direct answer or not. If counsel is not satisfied with the answer he can put another question, but he cannot make the witness a judge of the character of his own testimony.)

A. Certainly; I cannot do any more than that.

Q. Are you not the only member of the Southern Development Company of Nevada who consults the attorneys of said company in this matter, gets up the evidence, and attends to the details of this case outside of court?

A. I think I am about the only one that the attorneys consult, but I have had no occasion to get up any evidence since the trial in Inyo, two years ago, to my knowledge.

Q. You spoke about having heard that one Wilson had relocated the Stirling mine; who told you that?

A. It was told to me by a telegraph operator in the office.

Q. Do you know whether that location was made under any covert or open agreement between the Southern Development Company of Nevada and the said Wilson or the attorneys or agents who represent the Southern Development Company and said Wilson?

A. No; to my knowledge, I never heard of the mine being jumped by any one or relocated until within the past month.

Q. Since hearing that has your company taken any steps to quiet title to that mine?

A. Not to my knowledge.

Q. Have you considered Wilson's title of any effect or

439 any account?

(Objected to by counsel for complainant as asking for an opinion on a question of law, whether his title is good or not.)

A. I do not know; I do not know anything about the circumstances. I do not know whether this man has jumped the mine, as a matter of fact.

Q. You heard so?

A. I heard so; but I do not know under what circumstances he did it; whether he was right or wrong.

Q. You stated a communication went from Mr. Reddy to Mr. Wilson about preventing access to that mine; when was that?

A. That was about three weeks ago?

Q. Mr. Reddy is the attorney for the Southern Development Company, is he not?

A. Yes.

Q. Was your company informed of this message from Mr. Reddy to Mr. Wilson before it was sent to Mr. Wilson?

A. I think they were aware of it before Wilson got it; the president was aware of it.

Q. Did your company agree to the message?

A. The company could not disagree to it.

Q. Why could they not disagree to it?

A. If there was a letter sent to Mr. Wilson by Mr. Reddy or any one else, what business was it of any one else?

Q. How did you know it before it went there; was it a public message?

440 (Objected to by counsel for complainant as irrelevant and immaterial.)

A. I was told by the telegraph operator.

Q. Why should a telegraph operator disclose the contents of a message to you without he had the right or authority to do so?

(Objected to by counsel for complainant on the ground that counsel is assuming that it did not come in a legitimate way, and counsel objects to that assumption.)

A. I was told by a telegraph operator under my control, and he had a right to tell me?

Q. Why had he a right to tell you the contents of that message which was not sent to you and which was a message to another party?

(Objected to by the counsel for the complainant on the ground that it is no concern of the respondent in this matter whether the operator violated any duty of his at all; that it does not concern the respondent in any manner, and, furthermore, that it is apparent upon the face of it that the communication was one from the company's attorney and one which the company had a right to know, and there being no objection by the attorney to the client knowing the communication the defendant has no right to interfere or complain.)

A. The operator being a railroad operator under my control was entitled to tell me without any breach of confidence, and, furthermore, it was no breach, simply because Mr. Reddy was the attorney of the company of which I was trustee.

Q. Do you know whether Mr. Reddy is attorney for Mr.
441 John Wilson, the locator of that mine, also.

(Objected to by counsel for complainant on the ground that it is no concern of the defendant whether he is or not attorney for John Wilson, and is therefore immaterial and irrelevant.)

A. I do not know whether he is or not.

Q. I ask you if you understand under what circumstances and for what reason John Wilson relocated the Stirling mine, if he made such location?

(Objected to by counsel for complainant on the ground that it is immaterial, irrelevant, and incompetent and not in cross-examination.)

A. I know nothing about it whatever.

Q. Have you left that matter entirely in the hands of your attorney?

(Objected to by counsel for complainant on the ground that the question seeks to mislead the witness by assuming a fact not proven. There is no evidence that there was anything to leave in the hands of his attorney in that connection.)

A. I have nothing whatever to do with it. I know nothing about Mr. Reddy's relations with Mr. Wilson.

Q. Did you not consult Mr. Reddy when you heard that John Wilson had relocated the Stirling mine, being the mine formerly, or perhaps now, owned by your company, for the purpose of finding out whether said location was valid or not, or whether said location was made under an understanding between Mr. Reddy, the attorney of the company, and said John Wilson, or between
442 said John Wilson and your company?

(Objected to by counsel for complainant as immaterial, irrelevant, and not being in cross-examination.)

A. I never consulted with Mr. Reddy on that question. The only communication I ever had with Mr. Reddy about that matter was that I wrote him myself that I had heard Wilson had jumped the mine, and I thought it was news to Mr. Reddy when I wrote that. He never intimated to me, by word or any other way, that he knew anything about Wilson jumping it or any one else. I first communicated the news to him, as I supposed.

Q. Were you in any way surprised when you found a message coming from Mr. Reddy to this same Wilson telling him not to allow any one to enter the mine?

(Objected to by counsel for complainant as immaterial, irrelevant, and not cross-examination.)

A. I do not know whether I was or not. I am not surprised at anything nowadays.

Q. Is this alleged relocation of the Stirling mine by one John Wilson a *bona fide* relocation of said mine, or is it a sham relocatian made under and pursuing the same covert or direct agreement be-

tween the Southern Development Company of Nevada and the said Wilson or between some agent, attorney, or servant of said corporation and the said John Wilson for the purpose of giving an impression to the court who will try this action that the said mine is of no account, has been abandoned and deserted, and was not said relocation made under some such arrangement?

443 A. I never knew that John Wilson or anybody else had relocated the Stirling mine until I heard so incidentally within the past month. There never was, to my knowledge, any arrangement made by the Southern Development Company or by its attorneys or anybody to relocate that mine, to my knowledge.

Q. Does your company still claim to own that mine?

(Objected to by counsel for complainant on the ground that a good portion of the afternoon of yesterday was put in in examining the witness in every possible way on that question, and the witness has answered it over and over again, and also upon the ground that it is immaterial and irrelevant.)

A. They have had no reason to claim or disclaim, and the company as a company has taken no action in the matter, as far as I know.

Q. Would not the fact that the mine has been relocated or an attempted relocation of the mine been made be a sufficient fact to give your company some reason to claim or disclaim that property?

(Objected to by counsel for complainant as incompetent and immaterial.)

A. It might, but I do not know what action the company would take under the circumstances.

Q. In case the Southern Development Company of Nevada should obtain a judgment as prayed for in this action, and the court should decree that the property described in the bill should be reconveyed back and the possession thereof delivered to the defendant,

444 Frank Silva, I will ask you if your company is now in a position, in view of the relocation of Wilson and the failure to do the assessment work on those other claims, *and* redeliver back to Silva the possession of said property?

(Objected to by counsel for complainant on the ground that it is a question for the court to determine before making the decree whether that is the case or not or whether that is an important matter and not for the witness to determine; and, second and next, it calls for an opinion upon a question of law as to the ability of the company to reconvey, and involves the question whether the company now has the legal title to convey or the equitable title.)

A. I do not know that the mine has been relocated, of my own knowledge. I think if the court orders the company to reconvey that property that they would do all in their power to carry out the order of the court. I have no doubt of it.

Q. Did you and Mr. Silva discuss the proposition of hauling ore from the Stirling mine to the Elna furnace; if so, did not Silva

say that the ore in that mine would not pay to ship such a distance?

A. I had a discussion with Silva about the hauling of the ore from the Stirling mine to the Elna furnace. It was brought on by himself. I explained to him that I proposed or desired to haul one thousand tons of ore from the mine to the Elna furnace that would go thirty-two ounces in silver and about forty-five per cent. of lead; that from what I had seen in the mine and assurances he had given me, and from the assays taken I believed I could get one thou-
445 sand tons of that character; that I knew what I could get the ore hauled from the mine to Keeler for by teams. I knew what the railroad would take it from there up to Elna for. I knew what Mr. Miller would pay the Southern Development Company for that one thousand tons.

(Counsel for the respondent moves to strike out the answer on the ground that it is not responsive to the question, and further insists that the witness answer the question put to him and not go into details of outside matters.)

A. Mr. Silva positively agreed that this was correct, but he said to me there are two thousand tons of ore in this mine and that other thousand tons may not be sufficiently valuable to ship to that furnace under the circumstances that you speak of. I said, "All right; if that is the case let it stay in the mine; I don't care. All I want is one thousand tons of ore, and that is what I am buying the mine for." That was the conversation between Mr. Silva and myself on that subject.

Q. Then you made the trade with Silva on the supposition that there were two thousand tons of ore in the mine and a thousand of that would pay you?

A. No; I did not.

Q. That is what I understood you, then, to say.

A. I said he said there were two thousand tons in the mine.

446 Q. Did you believe there was at that time?

A. I did not.

Q. Why do you say in your complaint that you relied on his statement that there were two thousand tons?

A. I have stated here there were one thousand tons in the mine.

Q. Have you not sworn in the second amended bill that he told you there were two thousand tons of ore in sight in that mine, and that you believed and relied on that statement?

A. I swore he said there were two thousand tons of ore in that mine.

Q. Did you not swear in your complaint in this action that you believed and relied on all the statements made by Silva to you which are set forth in said complaint?

A. The complaint shows for itself.

Q. Have you not sworn in paragraph 10 of the second amended complaint of this action that your company believed all of the said representations made by the defendant to be true and relied upon them?

A. When I was making that affidavit I did it under the belief that the representations that Silva made to me about that mine in regard to the quantity of ore, the work done, its value, and things of that kind in connection with it, that I believed all the representations in general that he gave me in regard to it. I differed with him about the quantity of ore.

447 Q. Did you not also differ with him in regard to the value from the fact that you had assays made and found they differed from other assays made by Professor Price?

A. I did not have those assays when I was down there talking to him.

Q. If you believed the value he placed why did you go to the trouble and expense of having extra assays made?

A. Simply as a matter of business—to get the average assays all over the mine.

Q. You did not rely on his statements as to the value alone, but you chose to go and get assays made?

A. There was a thing that I could ascertain without reference to him at all.

Q. Who first suggested to you about drill holes having been made in the manner you describe?

(Objected to by counsel for complainant on the ground that the witness has stated that he first received information about the drill holes from Mr. Coffin, the superintendent of the mine, by a letter which is in testimony and on file in this case, and that the witness has fully answered on that matter.)

Mr. MINER: I will withdraw that question.

Q. Do you own any stock of the Southern Development Company of Nevada?

A. Not a share.

Q. Do you receive any salary from that company at present?

448 (Objected to by counsel for complainant on the ground that it is immaterial and irrelevant.)

A. No, sir.

Q. Are you interested at the present time in the business of that company?

A. Financially, do you mean?

Q. Yes, sir.

A. No, sir.

Q. Do you attend to the business of this company for nothing—without any compensation?

A. Yes; I never had any compensation.

Q. When did you communicate with Mr. Mills about this mine? Was it before your visit to it the first time, or subsequent to your visit?

A. I think it was after I came back from the mine.

Q. Are you sure about that?

A. That is my impression. It was done by telegraph, and those dispatches have been destroyed. They were not kept.

Q. You stated in your evidence in the direct examination that your company had always been ready to give back this property, and were now ready to give back the property mentioned in the pleadings?

A. Yes, sir.

Q. Is that a fact?

A. Yes, sir.

Q. Is your company, the Southern Development Company of Nevada, ready to-day and able to return the property mentioned in the pleadings in this action to the defendant?

(Counsel for complainant objects to the question so far as "ability" is concerned. That is not competent for the witness to an-
449 swer, because it involves a question of law. The balance of the question there is no objection to.)

A. They are willing to give it back and would carry out the order of the court if it was ordered to do so to the best of their ability.

Q. Did you not state they were ready to give that property back? Can your company be ready to do a thing which is not in its power to do?

(Objected to by counsel for complainant on the ground that the question is argumentative, and counsel tells the witness to observe the question.)

A. I did say that the company was ready. I do not believe that the company or any one else can do anything they cannot do.

Q. Can the Southern Development Company of Nevada to-day deliver the possession of that mine to the defendant in this action?

(Objected to by counsel for complainant on the ground that it is incompetent in that it involves a question of law, and it is for the court to determine the ability of the company to do any act that it may be necessary to do in this matter.)

A. The only answer that I can make to that is that I do not know.

Q. Did you not, before the first visit to the mine, offer Silva ten thousand dollars for the property?

A. Before I went to the mine?

Q. Yes, sir.

450 A. No, sir.

Q. Did you not, at Keeler, before your first visit to the mine, in January, 1884, or about that time, tell Mr. Tom. Boland, of Keeler, Inyo county, California, to tell Silva that you would give him, Silva, ten thousand dollars for the said Stirling mine?

A. Previous to my being in the mine?

Q. Yes, sir.

A. No, sir.

Redirect examination:

Mr. REDDY:

Q. You desired to explain some portion of your testimony, did you not, with reference to going into winze No. 2 at the time Mr. Forman and yourself visited the mine?

A. I stated in my evidence, when I first went to the mine I went down winze No. 1 and examined it. Since giving my evidence I am satisfied it was the next visit to the mine. It was on this first occasion that Mr. Forman, Mr. Silva, and myself came to the top of that winze, and Mr. Forman asked Mr. Silva what was down there, and he said nothing of importance; but little work had been done, showing little or no ore; so, being tired, we did not go down.

Q. What is the distance from the mine to Lone Pine?

A. It must be in the neighborhood of fifty-two miles.

Q. What is the nearest town to the mine?

A. Darwin.

451 Q. How far distant is that from the mine?

A. Twelve miles.

Q. How far is the mine situated from the supply of water?

A. These springs that this man spoke of is the nearest water that I know anything about. I understood from him that one of them was about three miles away and the other a mile and a half. I have never been to either of them.

Q. You have already stated why you did not sample the bottom of the ore chamber?

A. Yes, sir.

Q. I understood you to say that you relied upon Mr. Silva's statement on that question?

A. That is the floor of the chamber you are speaking of?

Q. Yes, sir.

A. Yes, sir.

Q. You have been asked by counsel about taking Mr. Forman's opinion. You were with Mr. Forman when he examined the mine, as I understand?

A. Yes, sir.

Q. You knew the information upon which Mr. Forman based his opinion, did you not?

A. Yes, sir.

Q. You knew that he did not see the bottom of this chamber?

(Objected to by counsel for respondent as leading.)

Q. I will change the form of the question. State whether or not you knew whether Mr. Forman had seen the floor of the ore chamber and what it was composed of.

452 (Objected to by counsel for respondent as immaterial, irrelevant, and on the ground that the reasons for taking Mr. Forman's opinions have nothing to do with what Mr. Forman knew or saw in that mine.)

A. I am very sure he never saw it.

Q. State whether or not you heard him inquire of Silva in the mine when you were there together as to what the floor of the chamber was composed of.

A. He did inquire of Mr. Silva.

Q. You spoke about hearing from Mr. Price, and I understood you to say that the sum and substance of what you learned from him was that he thought his assays were too high.

(Objected to by counsel for respondent on the ground that the question is leading, and the evidence of the witness shows for itself, and said evidence shows that he saw a report made by Mr. Price for a person by the name of William Hamilton and also received assays.)

A. Yes, sir.

Q. Were the assays in the report that you saw?

A. Yes, sir.

Q. What was the date of that report; how old was it at the time you saw it?

A. My impression now is, it was about eighteen months previous to the time that I was first at the mine that it was dated.

Q. About eighteen months old?

A. Yes, sir.

Q. State whether or not a large amount of work had not
453 been done after Mr. Price had examined the mine and the face of the mine changed.

A. I can only say that from what Mr. Forman told me.

Q. Was Mr. Price ever employed by you to give any advice?

A. No, sir.

Q. You knew, did you not, that Mr. Price had been employed by some one to make a report on that mine?

A. Yes, sir.

Q. Did you or not know that the report was made for the purpose of endeavoring to sell the mine to some one?

A. That is what I understood.

Q. The report was not made in the interest of a purchaser?

A. It was made for the middle man.

Q. You understood that?

A. Yes, sir.

Q. Did that have any effect on your mind as to the value of his report, you being the purchaser?

(Objected to by counsel for respondent on the ground that it is for the court to draw conclusions in this case and not for the witness.)

A. I cannot say as to that.

Q. Did it have any material or important effect on your mind at all?

A. No, sir.

Q. Did you lay any stress upon it?

A. Not very great. I would like to say one thing: In the last

question Mr. Miner asked me about Boland; he asked
454 me if I made a certain statement to Mr. Boland previcus to my going to this mine, that he could say I would give ten thousand dollars for this mine. He wanted to know if that was previous to my going to the mine. I said, No; I did have a conversation with Mr. Boland, but it was after my visit to the mine.

Recross-examination.

Mr. MINER:

Q. Was it on your return trip from the mine that you say you had this conversation?

A. Yes, sir.

Q. Why did you offer the ten thousand dollars at that time when you wrote a letter subsequent to that time that you were now, for the first time, prepared to make such an offer?

A. What I said to Mr. Boland was this: He came through my car. Mr. Forman was there with me. We got talking about my being out at the mine, which he knew, and he asked me what I thought of it, and we had quite a conversation. I told him that I had the assays; that we had examined the mine; I had seen Silva and had the samples, and if these samples turned out as I had been advised by Silva, and all that sort of thing, that I felt disposed to give him ten thousand dollars for the mine.

Q. Where was that conversation?

A. That conversation was at Keeler.

Q. Had not you just left Silva that day?

A. Yes, sir.

Q. Why did you sent back the message?

455 A. I did not send back the message; it was not in the shape of a message at all. The reason I did it in the conversation was that there was an understanding between Silva and myself that I was to have a week.

Q. What was the date of this conversation?

A. It was some time in the middle of January, I think; I do not remember the day that we got back there.

Q. I will ask you if that is a letter that you wrote to Mr. Silva about that date?

A. Yes; that is my handwriting.

Mr. MINER: I offer it in evidence.

(The letter is marked "Respondent's Exhibit B" and is as follows:)

"VIRGINIA AND TRUCKEE RAILWAY CO.,
"GENERAL SUPERINTENDENT'S OFFICE,
"CARSON CITY, NEV., *Jan'y* 23, 1884.

"Frank Silva, Esq., Darwin.

"DEAR SIR: I expected to write you to-morrow, as agreed on, making my final offer for the Stirling mine, but I have been much bothered in getting my samples assayed at the mint, and, worse than all, I found, on close examination of your abstract of title yesterday,

that your original notice of location had been omitted, which you know is very important in perfecting title. I thought it was on record at Independence, but, on inquiry, found it was not.
456 So I telegraphed you yesterday to get a certified copy of the location notice from your district recorder and send same to me by return of mail, which I hope you will do. On receipt of the document I will write you my offer for the mine by next mail. I regret the delay, but can't help it.

"I remain, truly yours,

"(Signed) H. M. YERRINGTON."

457 CHARLES FORMAN, called as a witness on behalf of complainant, sworn.

Mr. REDDY:

Q. What is your name, age, occupation, and place of residence?

A. My name is Charles Forman; age, fifty-one; occupation, miner; residence, Virginia.

Q. How long have you been engaged in mining, Mr. Forman?

A. About twenty-five years.

Q. What are you engaged in now; what is your present occupation?

A. Mining, principally.

Q. What position do you occupy?

A. I am superintendent of some mines in Virginia.

Q. Name them.

A. I am superintendent of the Overman, the Forman shaft, the Caledonia Mining Company, the Confidence Mining Company, and half a dozen of them.

Q. How long have you been engaged in the business of mining, as a master miner or superintendent, directing work?

A. Between twenty and twenty-five years.

Q. Where have you mined?

A. Principally on the Comstock.

Q. Have you mined at other points?

A. Yes; I was superintendent of the Meadow Valley Mining Company, in Lincoln county, Nevada.

Q. Have you visited and examined a number of mines in your time?

A. Yes, sir.

458 Q. At various times?

A. Yes, sir.

Mr. MINER: I will admit that Mr. Forman is a good miner and perfectly competent as an expert to testify on mines in this matter.

Mr. REDDY:

Q. Do you know a mine called the Stirling mine in the New Coso mining district, Inyo county, California?

A. Yes, sir.

Q. Have you ever visited that mine?
A. Yes, sir.
Q. When did you first visit it?
A. I think I first visited it in the summer of 1883.
Q. Could you state about what month?
A. My impression is it was in July, but I am not positive about that.
Q. Who was with you on that occasion?
A. Mr. D. L. Bliss, Mr. Frank Silva, Mr. F. H. Bliss, Mr. S. D. Woods, and myself.
Q. Who was claimed to be the owner at that time?
A. Mr. Frank Silva.
Q. He claimed to be the owner of the mine?
A. Yes, sir.
Q. And to be in possession of it?
A. Yes, sir.
Q. Did he show you the mine?
A. Yes, sir.
Q. What places did you examine? Did you examine the surface?
A. Yes; I examined the surface. I think the first place we went to was the point marked "point of location," or "discovery
459 point." Then we went from place to place and went very thoroughly through the mine at that time.
Q. Did you visit the tunnel?
A. Yes, sir.
Q. Which is marked on the map?
A. Yes, sir.
Q. You were shown through all the underground works at that time by Mr. Silva?
A. I think so.
Q. What was your object in examining the mine at that time?
A. To gain a general knowledge of the mine at that time.
Q. Did you have any conversation with Mr. Silva at that time about bonding the mine or making a purchase of it?

(Objected to by counsel for respondent as immaterial and irrelevant and not tending to prove any issue in the case, and that it does not appear that the conversation between Mr. Forman and Mr. Silva at that time had any bearing on the case at bar or in any way influenced the company in this action in this purchase.)

A. It is so long ago that I am not positive, but my impression is that Mr. Silva told me at the time that William Hamilton had a bond on it.
Q. Was anything said by Mr. Silva to you about giving a working bond?

(Objected to by counsel for complainant on the ground that the question is leading.)

A. I think something was said about a working bond. I have forgotten exactly what the language was. My recollection is that

he said he would not give a bond on it under any circumstances to any one.

460 Q. How long were you at the mine on that occasion?

A. I think we were there three or four hours.

Q. When did you next visit the mine?

A. I think it was the January following—January, 1884.

Q. Who was with you on that occasion?

A. Mr. Silva was there and Mr. Yerington, and a portion of the time Mr. Eddy was there.

Q. Mr. J. E. Eddy, of Darwin?

A. Yes, sir.

Q. Who claimed to be in possession and the owner of the mine at that time?

A. Mr. Frank Silva.

Q. State whether he claimed to have been in the possession and the owner from the time you first saw it until that time.

A. Yes, sir; I was so informed by him.

Q. Had there been any work done between your first and second visits that you observed?

A. Yes, sir.

Q. Will you be kind enough to state what work was done between the two visits?

A. It is so long ago I do not remember the particulars. I recollect there had been considerable work done in what is mentioned here as the "ore chamber." That had been enlarged somewhat and changed in some particulars. On that visit I did not go down into the 82-foot level, because I had examined it very thoroughly before, and I asked Silva the question whether he had done any work since I had been there. He said, No. I said, "There is no use

461 my going down, because it showed no ore before."

Q. Having examined it before, you concluded it was useless to go down, as you knew its condition?

A. Yes, sir.

Q. I will ask you if you were informed by Mr. Silva who had done this work in the ore chamber which was performed between your first and second visits?

A. He told me he had been working there.

Q. You may now state what examination you made of the mine at that time and who, if any one, led the way or pointed out the works.

A. Mr. Silva pointed out the works in the mine. We went all through the mine everywhere, except into this 82-foot level. We went in the first place to the point of discovery or point of location.

Q. Before describing that I will ask you if you knew the object of Mr. Yerington's visit, and had you any object in visiting the mine on that occasion?

A. We had talked the matter over in Darwin.

Q. State whether you were there knowing it was Mr. Yerington's purpose to examine the mine with a view to its purchase by the Southern Development Company?

A. Yes; he told me that.

Q. You examined the mine with that in view?
A. Yes, sir.
Q. And Mr. Silva was aware of the object?
A. Yes, sir.

Q. He was showing the mine with the view of making a
462 trade with the Southern Development Company?

A. Yes, sir.
Q. Through Mr. Yerington and yourself?
A. Yes, sir.
Q. Now, go on with a description of the points you visited and what was shown to you by Silva.
A. We went first to the point of location. We examined that, I think, on that occasion, although I am not positive whether it was that time or the first visit, but upon one or the other I said to Mr. Silva, "This looks quite encouraging. Why did you not sink on this here?" He said he thought it would be better and would open the mine in better shape to start the tunnel where it is, so he had gone over there.
Q. Describe the point of location, what was to be seen at that point, and what your attention was called to.
A. They had driven in, apparently, an open cut. After driving the cut in and striking the vein they had widened it out and made something of a chamber. Subsequently they had evidently put a pipe in for the escape of smoke and were using it for a kitchen. There was a fireplace in there. It showed galena ore on both the right-hand and left-hand sides.
Q. I understood you to say it looked encouraging?
A. Yes, sir.
Q. Had you known that that vein had been followed down to a point where it had pinched out to a mere seam, would you have considered it then an encouraging prospect?
A. No, sir.

463 Q. Now, go on to the next thing.

A. We went then and examined most of those open cuts and the tunnel an the hill. I am not positive whether we examined them first or the tunnel first. During that examination we examined the surface works, those open cuts and tunnels, and all of the underground workings from the tunnel, except the 82-foot level. We went into the right-hand branch there and went down to the ore chamber and sampled that very thoroughly, with the exception of the bottom, and that was covered with ore that apparently had slacked from the sides to a considerable depth; I do not know what depth. My impression is I took the little prospecting pick I had and stuck it down and raked it through the ore to see if it would reach the bottom. I asked Mr. Silva how the bottom was—if he had sunk below there. He said, No. I said, "How is the bottom? You, as a miner, know it is always a suspicious thing to see a bottom covered up, or anything of that kind." He said the bottom was as good or better than any ore which we saw in the sides of the chamber. We took our samples there.

Q. Describe the size of the chamber and how the ore was situated there.

A. My recollection now is that the chamber was about eight or nine feet wide, and I should think it perhaps might have been nine or ten feet high and six or seven feet long.

464 Q. Was it larger at the top or smaller than at the bottom?

A. I do not recollect particularly about that. My impression is it was an irregular shape.

Q. State whether there was any ore on the sides of the chamber.

A. Yes; there was ore showing on the sides, which I sampled; some very rich ore.

Q. Did you afterwards have that assayed?

A. Yes, sir.

Q. What was the value of that?

A. I think the best of the ore went something about fifty ounces in silver and sixty-five or seventy per cent. of lead. The general average was about thirty ounces in silver and forty-five or forty-six per cent. of lead.

Q. It was of that character of ore, then, he said, that the ore on the bottom was as good as the ore on the sides?

A. Yes. My recollection is that the best sample was from the sides.

Q. State whether the ore extended from the sides down to where this loose dirt was.

A. Yes, sir.

Q. And appeared to extend below it?

A. Every indication that it did.

Q. State whether Mr. Silva made any representation as to the quantity of ore in sight or developed from the work he had done in that chamber.

A. Yes; he said there was not less than five hundred tons, in his judgment, there in and about that chamber..

465 Q. What was the appearance of that chamber; did all the appearance conform to Mr. Silva's statement?

(Objected to by counsel for respondent on the ground that the question is leading.)

A. Yes, sir.

Q. State whether there appeared to be, in connection with this statement made by Silva, five hundred tons or not.

A. I thought so; I thought it was a reasonable statement.

Q Had you known that the bottom of the chamber was not composed of ore what would have been your estimate of the number of tons of ore in sight in that chamber?

(Objected to by counsel for respondent on the ground that it assumes that the bottom of the ore chamber was not composed of ore, and on the ground that it is leading and is a hypothetical question, not based on the evidence in the action.)

A. I should have estimated the ore at a very much less quantity,

Q. How much less?

A. If I had known the ore stopped there I should have thought the body was very small, because I saw it was worked out above; I should have doubted there being a hundred tons in it.

Q. Had you known that the ore on the sides had been pierced and ascertained to be but a very few inches in thickness at what would you have estimated the quantity?

466 (Objected to by counsel for respondent on the ground that it assumes that the wall had been pierced and that it is a hypothetical question, not based on the evidence in this case, and is immaterial, irrelevant, and incompetent; and, further, that it is immaterial on the ground that no evidence has been introduced showing or tending to show that the defendant in this action pierced the walls of that chamber in any manner, shape, or form with any fraudulent intent.)

A. I should have thought there were perhaps ten or twenty tons that could be cleaned up around it.

Q. In making your calculation as to the number of tons of ore in sight in the so-called ore chamber state whether the representations of the defendant Silva entered materially into your calculation.

A. Yes, sir.

Q. And were your calculations in any material degree based upon his representations?

(Objected to by counsel for respondent on the ground that it is immaterial, irrelevant, and incompetent; that it does not appear that Mr. Forman was an agent, servant, employé, or officer of the complainant in this action, and it is immaterial how he may have been influenced, as the pleadings in this case state that the Southern Development Company of Nevada was the party influenced by the action of Silva, and on the further ground that it does not appear that Mr. Forman ever communicated to the Southern De-
467 velopment Company of Nevada the impressions, words, or ideas spoken to or communicated to him by Silva.)

A. Yes, sir.

Q. State whether you made any inquiry of Mr. Silva as to the work which had been done in and about that chamber or mine which would reflect any light on the matter of the quantity of ore.

A. I asked him if there had been any work done that we could not see that would reflect any light on the quantity of ore developed there or the quantity of ore that might be found in the mine. He said, No; there had not been any that I had not seen.

Q. State whether he claimed to have pointed out to you all the work which had been done in the mine.

A. Yes; he claimed to have pointed out all the work which had been done that would throw any light on the quantity of ore there, or the extent of the deposit.

Q. State whether he made any representations as to the quantity of ore in sight in the entire mine.

(Objected to by counsel for respondent as irrelevant, immaterial, and incompetent as to what representations may have been made

to the witness, and that it does not appear that such representation in any manner or shape influenced the Southern Development Company of Nevada.)

A. He said that there were two thousand tons of ore there, and he believed four thousand tons could be taken out from the present workings.

468 Q. In estimating the quantity of ore in the entire mine state whether the representations of Silva cut any material figure in your calculations; whether you relied on them in making up your opinion as to the condition of the mine and the quantity of ore.

A. Yes; because he had done the work there and was more familiar with the mine than I could possibly become in the limited time I had there.

Q. At the point of location you figured on the quantity of ore in sight?

A. Yes, sir.

Q. You understood from Silva that there had been no work or sinking done upon the vein exposed in that open cut?

A. Yes, sir.

Q. Had you known that that ore had pinched out in a few feet in sinking your calculation and conclusion as to the quantity of ore in sight in that mine would have been different?

(Objected to by counsel for respondent as leading, irrelevant, and immaterial, what the witness might have thought, and that it does not appear that the representations made to him in any way influenced the Southern Development Company of Nevada to make this purchase.)

A. Certainly.

Q. From what points of the mine did you expect to get your two thousand tons of ore, or whatever you concluded was in sight?

469 (Objected to by counsel for respondent as irrelevant, immaterial, and incompetent; that what the witness thought or expected cuts no figure and does not show that the Southern Development Company of Nevada was in any way influenced by the thoughts of the witness or the intentions of the witness.)

A. I thought we could get a thousand tons of the grade of ore that we were looking for if it assayed as represented; the point of location, I thought, would produce quite a large amount, and most of the other from the point called the "ore chamber."

Q. When you speak of "ore in sight" what do you mean?

A. I think the term is usually applied to ore that you can figure should reasonably be in place. You see what you can actually see in sight; then you figure on its extending what your experience has taught you would be a reasonable distance beyond that point before giving out.

Q. Is that the usual way of measuring ore in mines for the purpose of ascertaining the quantity?

A. I think that is, where you are not able to get round; very often levels are run so that you can get on the top of the body just below and to the right or left of it. Then you have a solid block that you can measure, and you have to estimate the amount of waste.

Q. Is that the usual custom among miners?

A. As far as my experience has gone.

Q. Have you known that to be the custom in various
470 mining districts?

A. Yes, sir.

Q. Have you frequently examined mines and calculated and reported upon the quantity of ore in sight in that way?

A. I have in this way: I have never been a professional expert. I have been associated with gentlemen operating in mines, and when properties were brought to our attention I have gone and examined them, and sometimes have given a written statement of what I thought of the mine or else a verbal one.

Q. Have you examined in that way many mines?

A. Yes; a large number of mines.

Q. How many?

A. I presume over a hundred.

Q. You have had considerable experience in measuring ore in mines in that way?

A. Yes, sir.

Q. Has the term "ore in sight" a well-understood meaning among miners on this coast?

A. Yes, sir.

Q. In California and Nevada?

A. Yes, sir.

Q. It is an expression or phrase in common use among miners?

A. Yes; very common.

Q. And among men engaged in buying and selling mines?

A. Yes, sir.

Q. State, if you know, whether or not what is called "ore in sight" is made the basis of purchase and sale among mining men who buy and sell? Is it not a basis of calculation as to the value of the mine?

A. Yes; it is the principal basis of calculation.

471 Q. You ascertain the value of the ore, and then you ascertain the number of tons of ore in sight in the mine?

A. Yes, sir.

Q. And from those two factors, if I may so term them, you get at the market value of the mine, do you?

(Objected to by counsel for respondent on the ground that the questions are all leading.)

Q. State whether or not that is the fact.

A. They are the principal factors, though the formation and general surroundings are always taken into consideration, and the facilities for working.

Q. But the value of the ore and the quantity in sight are the principal factors?

A. Yes, sir.

Q. From your examination and the statements made by Mr. Silva to you what was the value of the Stirling mine when you examined it?

A. I made up my mind if our samples corroborated his estimate as to the quality and grade of the ore—I told Mr. Yerington I thought he would be safe in paying ten thousand dollars for the purpose for which he told me he wanted to purchase it.

Q. Had you known it to be the fact that the bottom of that so-called ore chamber was composed of lime, and that the ore did not extend but a few feet below, and that the vein at the place marked "point of location" had given out in sinking a few feet, what would you have estimated the value of that mine to be?

472 (Objected to by counsel for respondent as incompetent, immaterial, and irrelevant, and what the witness might have estimated it to be is not material to this case, and as assuming facts which are not proven in this case, and that it does not appear that the witness communicated any circumstance that influenced him in making up his opinion about the property to the Southern Development Company of Nevada, and that it does not appear that the witness was an agent, servant, or employé of said company.)

A. I should consider it utterly valueless for the purpose for which we were examining it.

Q. As a mine would it have any value, situated as it was, if there was no ore at the point of location and the ore chamber exceeding, say, a hundred tons?

A. I should consider it valueless, situated as it was, so far distant from fuel and water.

Q. State whether Mr. Silva made any representations to you as to the value of the mine.

A. I do not now recollect that he did, on my last visit. I heard him talking with Mr. Yerington. He carried on a conversation with Mr. Yerington with regard to the value of it. I heard him tell Mr. Yerington he thought the mine was worth fifteen thousand dollars.

Q. To what extent was the bottom of the chamber covered—sufficient to prevent examination?

A. Yes; we could not examine it without having tools and
473 facilities for cleaning the bottom. There was such a quantity there. There were no tools there. I had nothing but a little prospecting pick.

Q. It would have involved the removal of many tons of loose earth?

A. Yes; it would have involved the removal of several tons of ore.

Q. Which you had no facilities for doing?

A. We had no facilities for doing it.

Q. State whether you believed the representations of Silva as to the condition of the mine and the works that he had shown you, and that he had shown you all the works.

(Objected to by counsel for respondent on the ground that what this witness believes is immaterial and irrelevant, and that it does not appear that he was an agent of the Southern Development Company or that he communicated his belief or impression to said company.

A. Yes, sir.

Q. State whether you communicated all your conclusions and opinions and what they were based upon to Mr. Yerington as to the mine.

(Objected to by counsel for respondent on the ground that it does not appear that such conclusion, if any, was communicated to Mr. Yerington as an officer of the Southern Development Company, or whether it was merely communicated to Mr. Yerington as a friend and as to an individual having no relation with the company;
474 that it does not appear that said witness was employed by the company to make such examination, nor that the company authorized its president to employ an expert for that purpose.)

A. I think I did; we discussed the matter very thoroughly on our return and afterwards.

Q. State whether you communicated all your opinions and conclusions and the result of your assay to Mr. Yerington prior to the purchase by the company.

(Counsel for respondent makes the same objections.)

A. I think I did. I know that I communicated to him all that I did before the purchase and think I communicated all my impressions and everything. We discussed our impressions very thoroughly on our return trip from the mine.

Q. You were requested to go to the mine by Mr. Yerington, were you not?

A. Yes, sir; Mr. Yerington invited me to take a trip over the road with him. He said we would take a buggy and a pair of horses along with us in the cars, and he did not know where we would fetch up. He said we would take a general look at that section of country lying adjacent to their road. We took the horses and buggy on board at Hawthorne, and my impression is now that our first stopping point was at Keeler. We spent a day or two there examining the mines about Cerro Gordo, and my impression is we then drove up to Darwin. We spent a day or more there ex-
475 amining the Independence and Defiance and some other mines. Finally, Mr. Yerington told me he would like me very much to go over and take another look at the Stirling mine with him. He told me that he was looking for a lead mine that would be rich enough in lead to assist in smelting some of the dry ores down at the Elna furnace, and he was disposed to help those men down there if he could; so the next morning after this conversation we drove out and made this examination of the mine.

Q. State whether Mr. Yerington knew all the information that you had to act upon, and whether he knew that you acted in part

upon the representations of Silva as to the condition of the ore chamber and work in the mine.

(Objected to by counsel for respondent on the ground that it is immaterial and irrelevant what Mr. Yerington may have personally thought or how he may have been influenced by the statements of this witness, and that it does not appear that this witness was an employé of the Southern Development Company of Nevada or that Mr. Yerington had any authority to employ an expert in the service of said company.)

A. I think he did. I am quite positive I talked with him about my relying on Silva's statement; I thought he was reliable.

Q. Did you know of any work being done in the mine except what Silva had pointed out to you?

A. No, sir.

476 Q. Had you known the fact to be that Silva had pierced the ore on the sides of that chamber and ascertained the thickness thereof by drill holes, and that the floor of the ore chamber was not composed of ore, would you have advised the payment of the sum of ten thousand dollars for that mine or any other sum?

(Objected to by respondent on the ground that the question has substantially been put three or four times to the witness; that it is leading; that it assumes facts which do not exist, and that the testimony does not show such a state of facts; that it is a hypothetical question, which cuts no figure in this case, and that it does not appear that the company were influenced by the statements of this witness in any shape or manner, and that the witness had no authority to make any statements to said company by which it could be influenced.)

A. Had I known that I would have advised them to have nothing to do with the mine.

Q. On your way out from Darwin did you meet with a gentleman named Thomas Boland at Keeler?

A. I think he went up to Cerro Gordo with us.

Q. On your return trip?

A. Yes, sir.

Q. Did you hear any conversation with Mr. Yerington and Mr. Boland concerning the Stirling mine?

A. Yes; I heard considerable talk, both in the depot and in the car.

Q. Can you remember the substance of that conversation?

477 (Objected to by counsel for respondent as immaterial and irrelevant, and that it does not appear that the respondent was present at such conversation; that it is hearsay evidence and is not material to this case.)

A. I think Mr. Boland was speaking about the mine. They were discussing what it would cost to haul ore down, and Mr. Yerington finally told him if the samples turned out as he hoped they would

he thought he would give ten thousand dollars for the mine. There was considerable conversation there. The principal part of it was in regard to what it would cost to haul the ore.

Q. Were you with Mr. Yerington all the time he was at Keeler?

A. During all the time.

Q. That he and Boland were together there?

A. I think I was.

Q. State whether you communicated to Mr. Yerington the fact that Silva told you there was no work done in the mine except what he showed you.

(Objected to by counsel for respondent as irrelevant, immaterial, and on the same grounds as in the objections to the previous question.)

A. My recollection is that Mr. Silva made the statement in Mr. Yerington's presence, and also that Mr. Yerington and I discussed the matter afterwards.

(Recess to two o'clock p. m.)

478 *Afternoon Session.*

Cross-examination of CHARLES FORMAN:

Mr. MINER:

Q. At the time of your last visit to the Stirling mine, that you have testified to, that you made in company with Mr. Yerington, were you at that time an agent or employé of The Southern Development Company of Nevada, the complainant in this action?

A. I went down there at the request of the president.

Q. Did you go there at the request of Mr. Yerington as president of that company or merely at the request of Mr. Yerington personally and individually, as a personal friend of yours?

A. Mr. Yerington told me what his object in going up there was; that it was for the Southern Development Company, and he asked me if I would not do him the favor of going along.

Q. For what purpose did he wish you to go along?

A. To look at the mines with him.

Q. As an expert?

A. He wanted me to give him my opinion as a practical miner.

Q. In other words, as a mining man?

A. As a mining man.

479 Q. Outside of anything that Silva might have said to you during that visit what was your judgment of that property?

A. I thought favorably of it.

Q. Did you think it was worth ten thousand dollars?

A. I could not form any opinion without that opinion being affected by what Mr. Silva said to me, because there were certain matters in regard to the mine that I had to take his word for, not having any means of discovering these facts otherwise than by taking his word.

Q. State particularly the things which you took Silva's word for, and state whether you asked him specifically about those particular things.

A. The only particular things that I remember now that I asked him was if there had been any work done in the mine that would tend to show the extent of the ore bodies in it that I had not seen.

Q. Do you know whether he knew of any work himself at the time that you asked him that which was concealed from your view?

A. Not to my own knowledge. I have not been at the mine since.

Q. Now, was not the floor of this ore chamber that you have testified to the foot wall of an inclined winze?

A. It did not appear to be at that time. I judge it was the bottom of the chamber, from what I have heard since.

Q. Was not the bottom of the chamber an incline so steep
480 that there was a ladder to climb up and down in there?

A. No; I think not.

Q. Was there not a ladder in that chamber that you climbed up and down into the chamber on?

A. I do not know whether there was any there at that time, but something of that kind was used to get out and in.

Q. Was that because one side of the chamber was so steep that you had to use it?

A. Yes, sir.

Q. Describe the size of the bottom of this chamber that you walked around on. What was the length of it?

A. My recollection now is that it was about six or eight feet long and five or six wide.

Q. Then it was a surface of six or eight feet one way and four or five the other?

A. That is my recollection at this time?

Q. How much of that bottom could you walk on?

A. On the entire bottom.

Q. Was not the ladder on that very bottom?

A. I think not. It may have reached down to it, but I think not. My recollection is that this bottom was sufficiently flat that this loose ore that was on it laid there. If it had been anything like an incline it would have rushed off down to the lowest point. That portion which was covered with the loose ore was what I called the bottom of it.

Q. Did you not use your prospecting pick in digging ore out of that bottom and taking samples of ore?

481 A. No; it was impossible to do it. I am under the impression I may have taken this pick and raked through the loose dirt in the bottom to see if I could feel the depth of the loose dirt.

Q. No objection was made by Silva to your raking in that loose dirt or digging in it with the pick?

A. I think not.

Q. You had the means, if you desired, to have dug down to the bottom of that?

A. No; I had no means.

Q. Was there not an old pick that Mr. Eddy went to the surface and got?

A. My impression is that Mr. Eddy went out some time during the examination and got an old pick, but it was worn out so—the ends were five or six inches long, and it was worn so blunt that it was of no earthly use as a pick; no man would attempt to use it, and I could do more with the prospecting pick I had.

Q. Did the ore you saw there extend down to this bottom as far as you could see it?

A. It extended down to the loose earth.

Q. Did you not go down in the east end of the chamber, in the lowest part of it, and take samples off of there?

A. No; I think probably what you call the bottom and what I call the bottom are different things. I sampled the sides and ends. What I call the bottom is where this loose ore lay, and there I did not sample at all.

482 Q. What was the direction of the floor of the chamber? Which way did it lie?

A. I think it was dipping to the northeast—in a northeasterly direction; it inclined that way.

Q. The lowest end was in the northeast of the chamber?

A. That is my recollection.

Q. You used your own judgment and wishes in regard to taking samples out of that chamber, did you not?

A. I did; yes. Sometimes, on one or two occasions, I had to suggest to Mr. Silva that I preferred to pick down all the ore myself that I put in the sample.

Q. You would not allow him to select for you?

A. I did take in some little pieces that he selected.

Q. That is something you would not trust any one to do but yourself?

A. No, sir.

Q. That shows that in that respect you were not willing to rely upon Silva.

A. The expression "rely upon" is one that is very hard to answer. I did not rely solely upon him at all. That was the idea.

Mr. REDDY:

Q. As to sampling?

A. Yes, sir.

Mr. MINER:

Q. Did he offer to give you any samples yourself, in person?

A. Yes, sir.

Q. Did you refuse?

A. Some I did, and some I broke in two and threw a small piece into my samples and the balance away.

Q. Why did you refuse it?

483 A. Because I thought it was richer than the average.

Q. Was not J. C. Eddy present in the chamber at the time?

A. He was, a portion of the time; my impression is it was only a small portion of the time.

Q. Did Mr. Silva make any objection to your going in any part of that mine that you wanted to go?

A. Not that I remember.

Q. How did you speak to Silva when you asked him about the bottom of chamber being in ore?

A. I think I asked him how it looked in the bottom, and said to him, "Silva, you, as a mining man, understand it is always considered rather a suspicious thing to see the bottom of a chamber or winze or shaft covered up."

Q. What did he say?

A. He said it was splended ore; as good or better than I saw in the sides.

Q. Did you not see some good ore sticking out of the bottom in a pyramidal form?

A. In answer to that I would say no, and explain that the ore on the sides was going down. I saw on the sides, going down to this loose dirt, good ore—first-rate ore. I do not call that sticking up out of the bottom.

Q. Was not this pyramid resting on a portion of the bottom of the chamber?

A. Yes, sir.

Q. Its base was a part of the floor of that chamber?

A. No; I do not agree to that; what Mr. Yerington called

484 a pyramid was ore on one side of this chamber. It it had been part of the bottom of the chamber it would necessarily have been within the chamber.

Q. Could you go all round it; was it isolated?

A. Not to my recollection.

Q. Could you look around it?

A. No; I think you could put up a ladder and see where they worked down—where they had gone as deep as the ore on the other side of the chamber; I do not recollect.

Q. A portion of the floor ran up to that pyramid?

A. That is a very awkward way of expressing it. The ore that formed what Mr. Yerington called the pyramid was, to all intents and purposes, one side of this chamber, and the ore extended down to this loose dirt.

Q. Have you ever visited that mine since?

A. No, sir.

Q. And do not know the present condition of the ore chamber at all?

A. Not at all.

Q. Now look at the point of location. Which way was that ore body pitching?

A. I think it had a slight inclination to the northeast.

Q. Did not the tunnel extend in beyond that point marked "hole sunk" on the map, and after going in a ways a little drift was run to the left at the point of location?

A. My recollection is it was not, at that time. My recollection is that they apparently had run in and cross-cut the ledge, and afterwards they concluded to open it out and make a room for
485 some purpose, but no drift was run. If it was I have no recollection of it.

Q. Beyond this point marked "hole in the ground" was there not ore towards the north and northeast?

A. My recollection is that they had just passed through the ore, and satisfied themselves they had passed through the ore.

Mr. REDDY:

Q. In cross-cutting?

A. Yes, sir.

Mr. MINER:

Q. Are you positive there was no ore north or northeast of that point marked "hole in the ground?"

A. I am positive that I have no recollection of it.

Q. You do not remember?

A. No, sir.

Q. It is a question, now, of recollection with you?

A. Yes. I think there were a few little blotches of ore left on the face as we stood looking at it, facing it, walking straight in.

Q. Why did you ask Mr. Silva if this was all the work at the point of location when it was plainly to be seen there was very little work done there?

A. Because I said to him, "This looks so promising here that I should have thought you would have sunk on it at once."

Q. What did he say?

A. He said he thought it would be very much better to go to the point where he started the tunnel and open the mine in shipshape, where he had plenty of dumping room.

Q. Was it not a fact that the place where the tunnel was
486 started was a better place for mining than at the other end?

A. It might be, under certain circumstances, and under others it might not. As a general proposition it would be preferable, if a man had means, to open up the mine in proper shape at once. If he was short of funds and anxious to realize as quickly as possible I think naturally a poor man would have gone to work and taken out ore where he saw it in sight at once—the heavy galena ore; this ore at the discovery point was heavy galena ore.

Q. You did not ask him if he had done any more work there; you simply asked him why he had not sunk down there?

A. Yes, sir.

Q. He told you why he had not sunk there; he merely answered that question?

A. I think the first question that I asked there, I asked him if

there had been any work done there at all, when I saw they had built a fireplace in there. I asked him on the second visit if there had been any work done anywhere that I could not see that would have a tendency to develop any ore in the mine.

Q. Do you know whether Silva ever dug that hole marked "hole sunk" at the point of location or not?

A. I do not know of my own knowledge that there is a hole there.

Q. Do you know that Silva knew that there was a hole there?

A. I do not. I do not know myself there is a hole there,
487 of my own knowledge.

Q. When you saw this dirt on the floor of the chamber you were a little suspicious, were you not?

A. Well, yes; it looked to me, before I asked the question, as though it might naturally have slacked from the sides and run down. I wanted to know what was underneath that.

Q. Is not that ore of a very dry nature and slacked easily and run down?

A. In the chamber?

Q. Yes, sir.

A. I think of that which was exposed there quite a large portion of it would have slacked very easily and some was very hard.

Q. What was the nature of the material lying loose on the floor of the chamber—small or coarse?

A. My recollection is it was quite fine.

Q. A kind of powder—pulverized ore dust?

A. Granulated; coarser than it would be crushed for milling.

Q. Notwithstanding your suspicions, you were willing to take Silva's word when he said there was ore in the bottom of the ore chamber?

A. I had to take it. I had not the facilities there for proving to the contrary.

Q. Did you ask Silva if he had any picks or shovels? Did you care to look at them if he had any picks or shovels?

488 A. Yes; I cared to know, because I wanted a large pick to sample with. He volunteered the statement that he had not been mining for some time and had no blacksmith there, and his tools were in bad shape. I think he volunteered the statement himself.

Q. Do not you know that might have been on your first visit that he told you that?

A. My impression is he told me that on both occasions.

Q. Did you ask for a pick on that occasion of your last visit?

A. I think I did.

Q. Did not Mr. Eddy go to the top of the mine and get a pick and bring it down there?

A. He went up and got what had been a pick; it was too dull to be called a pick.

Q. Was it too dull to scrape loose powder and dust off the floor of a chamber?

A. You could rake through it in order to clean it away, but you would want shovels and buckets.

Q. Could you not turn the pick around flatways and rake it?

A. I suppose I might have cleaned it away if I had taken a sufficient length of time. I could probably have done it with my hands. I did not propose to spend a day or two at it.

Q. You did not care to do it?

489 A. I did not care to do it, under the circumstances, without having tools there to do it with. If I had had a shovel and bucket there I undoubtedly should have found the bottom.

Q. It would take you a day or two to rake off a space eight feet long and four feet wide?

A. It might, with my hands.

Q. And when you stuck your little prospecting pick down to rake, did you meet with any resistance?

A. I do not think I met any resistance except that offered by the fine dirt; I am confident I did not reach the solid ground at all; that satisfied me that the loose dirt was quite deep there and was further than my pick would reach.

Q. Will you swear positively that you did not strike your pick once into it for that purpose?

A. I will swear positively that my recollection is that I took the pick and raked through it.

Q. I want to know as an absolute fact, did you, for the purpose of determining the depth of the dust, powder, or dirt on the bottom of that chamber, strike your pick into it to determine the depth of it?

A. I think I did; I will not swear positively, but my recollection is that I did do it.

Q. When Eddy brought down this other pick, what di

490 you do with it? Did you use that?

A. I think I looked at it and told him it was of no use except to hammer with, or something of that kind; it was too dull, and not as good as the little pick that we had.

Q. Was there any ore on the north side of the ore chamber at the time of your visit?

A. I think there was a little on the northeast.

Q. Did it have any dip or pitch to it?

A. I do not recollect as to that; my recollection is now that that side there was standing pretty straight, pretty nearly perpendicular.

Q. Did you examine the ore in the chamber for the purpose of ascertaining the course of the body of ore—its course or pitch or dip?

A. I looked at it.

Q. What was its course, if it had any?

A. Southeasterly and northwesterly.

Q. That was the course of it?

A. I think so.

Q. What was the pitch or dip of the body?

A. A slight inclination to the northeast.

Q. Was there an opening between the northwest corner of the ore chamber and the level known as the thirty-eight-foot level?

A. I think there was a hole there.

Q. Could you not trace ore clear up into the thirty-eight-foot level?

A. Yes; I think there was what I would call a tracing of ore.

Q. When Silva spoke to you about there being so many
491 tons of ore in the mine did you take that as a statement of a fact or a statement of an opinion?

A. That is pretty hard to tell; I took it as being his belief that it was there; I thought that his opinion ought to be very good, as he had mined all round it, and he stated it as a fact to me.

Q. Did you tell him that he was mistaken about it?

A. I told him that I doubted there being that amount of ore there. I told him further that I thought that some of the rock he thought was good ore there contained so much iron that it would hardly pass for ore.

Q. Were you not expressing your opinion to him all the time and was he not expressing his opinion to you about the value of the ore in that mine?

A. I do not think we were expressing opinions back and forth; I asked him the question.

Q. What question did you ask him?

A. What amount of ore he considered there was in sight.

Q. You did not say "How much ore is there in sight?"

A. Yes; I asked him how much there was.

Q. What did you say? Give the words you used.

A. I asked him on two or three occasions; I think I probably asked it in both ways.

Q. Were you asking him for his opinion of the mine?

A. I wanted him to state what he claimed there was there—what he knew there was there from having mined and done work about there.

Q. When you ask prospectors questions of that sort do you mean to get a fact from them as to value or quantity of ore, or do
492 you ask it for an opinion merely?

A. I want to get at the facts when I am asking those questions as closely as possible.

Q. Was it possible for any man to know the amount of ore in that mine as an absolute fact?

A. No.

Q. Why did you expect Silva to tell you as an absolute fact how much ore there was in that mine?

A. I expected him to state the facts as he understood them.

Q. About the quantity of the ore?

A. Yes.

Q. Did you ask him that for an opinion, simply, based on what he might say outside of anything else that you saw?

A. I asked him because I wanted him to say what amount of ore he knew to be there; he having mined all round it should know and be better informed about it than a man making a cursory examination, as we were compelled to. He stated to me he had repeatedly figured on the ore.

Q. Did you attempt to figure on it yourself?

A. I did it a rough way.
Q. Did you let him know that you figured on it?
A. I am not sure as to that.
Q. Did you inform Mr. Yerington that you had figured on it?
A. Yes.
Q. Did you give him the benefit of your judgment about this matter?
A. I presume I did.
Q. Discuss it fully with him?
A. I think so.
493 Q. Did any other member of the Southern Development Company speak to you about this mine?
A. I do not really know who the members of the Southern Development Company are.
Q. Do you know Mr. Bliss?
A. Yes.
Q. Did he ever say anything to you about the mine?
A. Oh, yes; Mr. Bliss and I talked about it on the first trip when we were there together. I am not sure whether I ever talked to him after the second visit.
Q. For whom did you go out on the first visit?
A. Myself.
Q. The first visit you went out for yourself?
A. Yes.
Q. What are Mr. Bliss' initials?
A. D. L. There were two Bliss along with us, but the one I refer to is D. L.
Q. Do you know that he is connected with the Southern Development Company?
A. I have been informed that he is one of the trustees or directors.
Q. After this first visit and before the second visit you made with Mr. Yerington you spoke to Mr. Bliss about this property?
A. We talked of it when out there and while on the way in. I cannot remember whether we talked about it afterwards any further than to compare our assays soon after we got in here. I had
494 mine made and he had his made. We divided the samples and he got half of them.
Q. For what purpose did Mr. Bliss go out to the mine?
A. I do not know.
Q. Did he go out with you on this occasion?
A. Yes.
Q. Did you go in company with him?
A. Yes.
Q. You do not know why he went there?
A. Not of my own knowledge; I think he went to satisfy himself. He wanted to ascertain all the facts he could in regard to the country generally, as I understood it. If you wish to know how I happened to go with Mr. Bliss I can tell you all about it.
Q. I do not care about knowing all the reasons. How long did you and he remain in the mine at that time?

A. I think we were there at the mine and on the hill probably three or four hours.

Q. Did you go in the ore chamber?

A. Yes.

Q. Did you go in the point of location?

A. Yes.

Q. Did Silva make any false statements to you at that time, or any statements in regard to the working of that mine by which your judgment was influenced? If so, state.

A. He made practically the same statements that he did on the second occasion.

Q. Will you state positively what those statements were that he made?

A. No.

Mr. REDDY: On the first visit?

A. Not word for word; I will state the substance of it.

Mr. MINER: Did you say anything to him at that time about the bottom of the chamber being covered up?

495 A. I did not, for the bottom was not covered up at that time. What was the bottom at the second time I was there was not the bottom at the first time I was there.

Q. What was the size of the chamber on your first visit—the difference between the size then and on your second visit; how did you get into the chamber? State particularly the difference in the looks of the chamber at your different visits.

A. My recollection is that we got in practically in the same manner on the first time that we did on the second occasion. My recollection is that the chamber was very much smaller, because on the second visit Mr. Silva told me that he had taken out quite a number of tons of ore; he said some twenty or thirty tons of ore since I had been there—a very high-grade ore.

Q. Was the bottom any deeper the second visit than it was the first; if so, how much?

A. My impression is that it had been sunk four or five feet deeper. My recollection is that the first time we could not stand up comfortably in but a very small portion of it. I know Mr. Silva told me he had extracted quite a number of tons of very high-grade ore since I had been there.

Q. Do you know whether he took that ore off the roof or off the bottom?

A. I do not; I think he told me he had taken it generally all around, and he told me what it assayed, but I have forgotten now.

Q. Did you and Mr. Bliss, on that visit, take samples out

496 of that ore chamber?

A. Yes.

Q. Were your opinions of that mine at that time favorable or unfavorable?

A. My impressions were favorable.

Q. Did you ever write an opinion on this mine for the Southern Development Company of Nevada or any of its agents?

A. I did not.

Q. Did you ever write a letter about it to anybody connected with this company?

A. I think upon my first visit to the mine, when I returned I wrote to Mr. Hamilton.

(Counsel for complainant objects to what the witness wrote to Mr. Hamilton as immaterial and irrelevant.)

Q. Before going to this mine had any party spoken to you about it?

(Objected to by counsel for complainant unless the parties referred to are connected in some way with the Southern Development Company.)

A. Yes; Mr. William Hamilton had.

(Counsel for complainant moves to strike out the answer on the ground — it has no connection with the Southern Development Company at all.)

Q. Who else?

(Same objections by counsel for complainant, unless the parties referred to are connected in some way with the Southern Development Company.)

A. I think Mr. Morrow; I think Mr. Hamilton had talked with Mr. Morrow. Mr. Morrow told me that Mr. Hamilton had
497 talked to him about the mine.

(Counsel for complainant moves to strike out the answer as hearsay, and the parties named having no business relations with the company.)

Q. Did any other parties besides Mr. Hamilton and Mr. Morrow speak to you about this mine?

(Counsel for complainant objects to the question on the same grounds as before stated.)

A. Mr. W. H. Smith and F. F. Osbiston spoke to me about it.

(Counsel for the complainant makes the same motion to strike out on the grounds before stated.)

Q. Did these parties give you their opinion as to what they thought of the mine?

(Objected to by counsel for complainant as irrelevant, immaterial, and incompetent and not cross-examination.)

A. Mr. Hamilton told me he thought it was a fine property. He had had it bonded and wanted to sell it.

(Counsel for complainant moves to strike out the answer of the witness on the ground of its being irrelevant, immaterial, and not cross-examination.)

Q. Did any of these parties want you to examine that mine for them and make a report for them or give them an opinion in regard to it?

(Counsel for the complainant objects to the question on the ground that it is irrelevant, immaterial, and incompetent.)

A. Mr. Hamilton wanted me to look at it with a view of purchasing it.

498 (Counsel for the complainant moves to strike out the answer of the witness on the ground of its being irrelevant, immaterial, incompetent, and not cross-examination.)

Q. When was that?

A. I think it was in the latter part of 1882 or in the early part of 1883 that Mr. Hamilton talked to me.

Q. Did you look at the mine for that purpose for him?

(Same objection by counsel for complainant as to last question.)

A. No. Some months afterwards I happened to be in that section of the country and went to look at it for my own satisfaction and information.

Q. At the time you went this time was that the time you went with Mr. Bliss?

A. Yes.

Q. At the time you visited the mine with Mr. Bliss had you in view the request of Mr. Hamilton made to you to look at the mine?

A. I probably recollected he had done that. My impression was that his bond had expired and that he had nothing further to do with it, until I got up there and Mr. Silva told me his bond had not expired.

Q. Did you report your opinion then to Mr. Hamilton?

(Same objection by counsel for complainant as before stated.)

A. I am not certain whether I wrote to Mr. Hamilton or saw him. I either wrote to him or saw him and told him that I had seen the mine and I did not think well enough of it to do anything under his bond with it.

Q. Did you tell him how much you thought the mine was worth?

499 (Same objection by counsel for complainant as before stated.)

A. I do not recollect that I did.

Q. Did you consider the mine to be worth at that time ten thousand dollars?

A. I do not recollect now. I think I thought it might do to take as a speculation at ten thousand dollars.

Q. Did Mr. Hamilton pay you anything for your opinion on that property?

A. No, sir; I was simply to go and look at it and buy it if I thought well enough of it.

Q. You were to buy the mine yourself?

A. He wanted to sell it to me or to some friends of mine.

Q. For what figure; how much did he want to sell it for?

A. He did not name a price. He told me he had bonded it for thirty thousand dollars, and I supposed he would not sell it for less than his bond and I did not ask him the price.

Q. A great many of these things you state on your recollection; you are not positive or certain whether they are so or not?

A. I state my best recollection and memory. A great many I am positive of.

Q. You have not paid much attention to these things since they have happened?

A. Very little.

Q. If Silva had said nothing to you during your visit out to that mine at all and you just made a personal examination of it, just such a one as you made when you went there, would you
500 not have considered the mine worth ten thousand dollars or more?

A. I would not have given ten thousand dollars without knowing more about it.

Q. What particular thing was it; he told you about these things that you have spoken of?

A. Yes; he assured me there had been no work done. There was some drifting, as is always the case in almost every mine I have seen; drifts run in the wrong direction and afterwards filled up or utilized to put waste truck in.

Q. You did not refer to any drill holes when you asked him these questions; you did not think of drill holes?

A. I did not think of drill holes. Those were included in the idea that there was no work done that would develop the body that I could not see.

Q. What kind of work was in your mind when you asked the question?

A. He had run several drifts around there. I wanted to know if there was any work that would tend to develop the extent of the body of the ore that was concealed from me; that was the general idea of what I wanted to know.

Q. Do you mean tunnels and drifts and things of that kind?

A. Work of any kind whatever that would tend to develop the extent of the body of ore.

Q. Did you have any particular kind of work in your head?

A. I cannot say that I did, except that I always had that general idea in my head, any kind of work whatever.

Q. You went in these tunnels "A," "B," and "C?"

A. Yes.

501 Q. Did you notice the dip and the course of the ledge in there?

A. It had a slight inclination of dipping into the hill.

Q. In what direction by the compass?

A. That would be a little northeasterly.

Q. Did you listen particularly to the conversation between Mr. Yerington and Keeler so that you could now repeat it?

A. I could not repeat it word for word. I can repeat the substance.

Q. Can you tell whether Mr. Yerington at that time told Mr. Boland to tell Silva that he would give him ten thousand dollars for the mine, or that he would let him know after awhile whether he would give him ten thousand dollars for the mine?

A. I do not think he told him to deliver any message whatever to Silva. My recollection is that he told him if his samples turned out all right he would probably give him ten thousand dollars for the mine. I do not think he sent him any message whatever

Q. Have you any interest in this matter one way or the other?

A. Not in any way, shape, or manner.

Q. Are you subpœnaed here?

A. No.

Q. Who pays your expenses here?

A. I pay my own.

Q. Does not the Southern Development Company of Nevada pay your expenses?

A. I do not think they ever have paid me a penny in any way,
502 unless it might be that in travelling sometimes Mr. Yerington paid for the meals. I had a pass over the road, so that I was not running any expense at all.

Q. On this occasion did you have a pass over the road, or do you live here?

A. Now?

Q. Yes.

A. I live in Virginia City. I have and always have had a pass over the Virginia and Truckee road, not given in connection with this case at all.

Q. Do you get any pay from the Southern Development Company for your report on this mine?

A. No.

Q. None at all?

A. No; I did it merely as an act of friendship for Mr. Yerington and his associates.

Q. Did you know when you went to that mine whether Mr. Yerington in person was going to buy that mine, or whether the Southern Development Company of Nevada was going to purchase it?

A. Mr. Yerington told me what he proposed to buy it for. He told me the whole particulars.

Q. Are not mines usually bought and sold on the prospect and appearance of the mine?

A. Scarcely two mines are sold on the same conditions, in my experience.

Q. How long had you known Frank Silva when you went down to visit the mine?

A. I am not sure. I think I knew Frank Silva at the Ophir mine
503 somewhere about 1870 or 1871. He told me the first time I visited the mine that he recollected me very well, and told me where he had been, and asked me if I did not recollect his having had something to do at the Ophir mine in connection with the pump man that I knew at the Ophir.

Redirect examination by Mr. REDDY:

Q. You were asked if you did not rely on Silva's statement as to the work. Was that all of the statements of Silva on which you relied?

(Objected to by counsel for respondent on the ground that the witness has fully testified as to these matters, and that it is not an examination of any new matter brought out on the cross-examination.)

A. No.

Q. State whether you did or did not rely on all of Silva's statements except as to the two thousand tons.

A. I think that I did generally; yes.

Q. Did you rely upon his statement as to the five hundred tons of ore at the ore chamber?

A. Yes.

Q. Now, as to whether that statement regarding the ore was a statement of fact or opinion. If you knew that a lime bottom had been found in that chamber two or three or four feet below where you could see it you would know there were not five hundred tons of ore there?

A. I would be positive of it.

Q. When you would say there were not five hundred tons of ore you would be speaking from a knowledge of the fact?

A. Yes.

Q. If Silva knew that the bottom of that ore chamber had been reached at a distance of two or three or four feet below
504 where you were standing, then he knew whether there was or was not five hundred tons of ore at that point, or did he not?

(Objected to by counsel for the respondent as leading, and is not any new matter brought out on cross-examination, but is a cross-examination of the witness.)

A. He would certainly know there were not five hundred tons there.

Q. And had he stated to you that the bottom had been found at the depths designated you would have known as a positive fact that there could not have been five hundred tons — ore in that space, or would you not?

(Objected to by counsel for respondent as leading and assumes something not proven, and assumes that the defendant knew it was in lime and knew that the bottom had been reached, and is a matter not in proof and is immaterial and irrelevant.)

A. Certainly I would.

Q. You say that you had free access to the mine to take samples as you pleased?

A. Yes.

Q. What do you mean by that?

A. That so far as any opening was concerned he did not hinder me from going in. He did not say you must not go here or there.

Q. You do not mean you had free access to the bottom of that shaft or chamber?

A. No; I mean he did not say to me I must not go here or there.

505 Q. You were asked if Silva refused to let you go to any place that you wanted to in the mine. If he had refused to allow you to do so or informed you there was any place open in the mine and refused to permit you to go there you would not have purchased it at all?

(Objected to by counsel for respondent as irrelevant, immaterial, and leading.)

A. I would have advised Mr. Yerington to have nothing to do with the mine.

Q. You were asked by counsel if you did not have a pick there to clear out the bottom of that chamber; are picks generally used for shoveling loose earth?

A. I have never known them to be.

Q. How long would it have taken you to shovel out what there was in that chamber with a pick?

A. A few months probably, because that dirt was fine and would have run off.

Q. State whether the dirt would have to be raised some distance.

A. Yes; it would have to be hoisted up and taken out of the chamber in some way, in my judgment.

Q. You were asked by counsel if it was possible for any man to know the quantity of ore in the mine. Now, I will ask you in connection with that question if it is not possible for a man to know, after he has worked in a given locality, that there is not ore in that locality or to know the quantity in that locality where it was opened?

506 (Objected to by counsel for the respondent as leading, immaterial, and irrelevant, and is a cross-examination of his own witness.)

A. I think it is possible for a man to know that there is not ore in a given locality after he has prospected it. I do not think it is possible for a man to know the exact quantity; it is not only possible but it is very easy for him to know that there is not a given quantity.

Q. In other words, if you had gone to the bottom of that chamber and found a lime floor there you would have known there was no ore there?

A. Yes.

Q. So, if the party who worked at the point marked on the map "point of location" followed that vein down where it run into the country rock he would know there was not any ore there extending down further?

(Objected to by counsel for respondent as leading, immaterial, irrelevant, and incompetent.)

A. Yes.

Q. It is easy for a man to ascertain there is not ore at a given point?

A. Yes; by developing work.

Q. That is not a matter of opinion at all when he has work there?

A. Not after he has prospected the ground.

Q. You were asked by counsel this question: Had Mr. Silva said nothing to you about the mine would you not have considered it worth ten thousand dollars? In connection with that question I will ask you if you had found the bottom of the ore chamber filled in with loose earth and could not see the bottom of it would you
507 have bought the mine under such circumstances without an explanation as to what was underneath the loose rock in the bottom?

A. No.

Q. Then, if you had not been informed by Silva as to what the bottom of that ore chamber was composed of, would you have purchased or advised the purchase of the mine, not knowing what was in the bottom?

A. No.

Q. You have been engaged in purchasing and buying and selling mines, as I understand you?

A. Yes.

Q. And I understood you to say in your cross-examination that you often found in the examinations of mines parts of mines filled up?

A. Yes; it is exceptional where you find a mine where they have not filled up some portion of it.

Q. In those cases what is done; do you have to clean out all those places, or do you take the word of the party or owner selling as to what is in those places?

A. We usually took the word of the owner or managing agent.

Q. In many cases it would cost nearly as much to clean out the parts of the mine filled up as the mine would be worth; is not that the fact?

A. Yes; I have seen a great many mines that I would not give half what it would cost to clean the drifts and tunnels and winzes out.

Q. I understood you to say in a conversation with Silva you told him when estimating the ore that there was considerable iron rock in the mine that was not ore?

A. I told him that there was considerable rock that he thought was good ore that I thought was iron ore and carried
508 but very little metal.

Q. What ore were you searching for there, and what kind of a mine was this that you were looking at, as you understood—a lead mine or an iron mine?

A. Lead and silver mine.

Q. Were you treating for a lead mine?

A. Yes; smelting ore.

Recross-examination by Mr. MINER:

Q. Knowing that the ledge in the ore chamber, as you say, ran north and south and pitched to the northeast, how did you expect that ore to go down through the floor?

A. I did not say the ledge ran north and south.

Q. I asked you the course of the vein and you said northeasterly and southwesterly.

A. I say it is northwesterly and southeasterly.

Q. Was that the course in the ore chamber of that vein?

A. So far as developed, I think it was.

Q. Did you have a compass with you?

A. I do not think I did.

Q. Being down in that ground in a space six feet long and four or five feet wide, fifty-five feet beneath the surface of the ground, was there any man on earth who could tell the course of a vein in that space?

A. I could not tell to a degree. In my judgment, that is the general course.

Q. Can you tell within twenty degrees down under the ground in that way?

A. If I know the course under ground I know the course
509 without having a compass with me.

Q. Did you know the course of the general drifts of the mine at that time—not the present time?

A. I think I knew the general course of them at that time.

Q. Did you know where north, south, east, and west were when you went down to examine that mine?

A. I am certain that either Mr. Bliss or I had a compass on the first visit there. I had a compass on the second visit there. At that time I carried on my chain a small compass—about the size of a quarter of a dollar.

Q. The first time?

A. On both occasions.

Q. Did you use it in the mine?

A. Yes; just roughly held it in my hand to get a general idea of the direction.

Q. Did you use that in the ore chamber?

A. I used it whenever I wanted to know the course.

Q. Can you remember how that read?

A. It was such a small compass that I only got a general direction. I did not attempt to read to the degree.

Q. You are not positive of what the course of that vein was?

A. I only know that the general course was the same as shown on the surface.

Q. If a body of ore was pitching north or northeast into the hole then it would soon leave the ore chamber, would it not?

A. It would depend altogether on the degree of inclination.

Q. It would have to go down straight, without any dip, to have the floor of the ore chamber all the time on the ledge?

510 A. The question is one that I cannot comprehend and do not understand.

Q. What do you call the floor of an ore chamber?

A. Whatever happens to be the bottom of it at the time. There may be a dozen floors. You use the term so that I do not understand.

Q. I use it in the commen sense, not the technical sense.

A. In ordinary mining parlance you work up and timber, and each set of timbers put in form what is called a floor. The floor in this instance happened to be the bottom of the ore chamber at that time. The distance from what we call the floor to the top was not sufficient, the slight inclination that this had, to carry the ledge out of this chamber at all.

Q. You have stated that the pitch of the ledge was towards the north or northeast?

A. A very slight pitch it had.

Q. How much of a pitch did it have to take it away entirely from that so-called floor, the thing on which you stood in that excavation?

A. That would be impossible to tell without making an accurate survey and ascertaining the exact dip.

Q. From all you know this excavation at the time of your two visits was just started on the edge of an ore body, which ore body was pitching to the north and northeast and necessarily by said pitch going away from the floor of that excavation or the bottom of it?

511 A. It simply had the appearance of being an excavation within a body of ore; within an ore body of greater or less extent.

Q. I will ask you if there was ore all around that on all the six sides of that chamber?

A. No; I think not.

Q. State the sides on which there was no ore.

A. I think there was little or no ore on the southwest side.

Q. Was there any on the south side of the chamber?

A. I think there was some spots of ore all around that had not been cleaned off on that side.

Q. Most of the ore was on the north side of that chamber. There was a face of ore on the north side?

A. Yes; that was a face of fine ore.

Q. Do you know whether that is there now or not?

A. There was ore on the south side also. I do not know anything about its condition now.

Q. Most of it was on the north side, the heaviest body?

A. My recollection is it showed more on the north side.

Q. Did it look to you as if this chamber was being sunk down on this ore on the course of the vein or not?

A. There was not sufficient working to tell whether it was on the course of the vein or not. My impression was it was on the course of the vein.

Q. Did that thought occur to you at the time?

A. Yes.

Q. Did you determine it in your own mind?

A. I made up my mind that the chances were, from the slight development, that it was on the course of the vein.

Q. Did you form that idea irrespective of the fact that Silva
512 said there was ore in the body?

A. The bottom had nothing to do with it. He told me there was ore there.

Q. Did you judge yourself from what you saw whether that was on the course of the vein or not?

A. Yes.

Q. You did not take Silva's statement for that?

A. Not as to that. The bottom had not anything to do as to whether it was on the course of the vein or not, except if I had known the bottom was limestone then I should have said at once there was no vein there.

Q. Would you not have thought the course of the vein was going in another direction?

A. No; I should not have thought there was any vein there at all.

Q. If you are inside of a hole with six sides on it, and you see on one side a streak of ore three feet wide, and on the bottom you are standing on lime, where is the course of that vein?

A. I should call it a deposit.

Q. Supposing you cut down verticatly through the ground, would you not strike ledges?

A. I do not know if we would or not. That would depend on circumstances. We would if they were there.

Q. Cannot the course of the vein go through an excavation and go through the side of that excavation and keep on going in the center of the world?

A. Certainly; that is a different proposition from the other one.

You said if this bottom was limestone could it not be
513 on the course of the vein. I say if the bottom was limestone I would not call it a vein at all. It would simply be a deposit.

Q. In that excavation the place that you were standing upon and which contained the earth was what you termed the floor, is it?

A. Yes.

Q. That was what you called the floor?

A. What we stood on.

Q. Now, let us call that the floor in the ordinary sense—not in the mining sense at all. Supposing that the ore body was altogether on the north of that, pitching into the hill, would the fact that you were standing on limestone cause you to say that there was no ore body there at all pitching to the north?

A. Certainly I would not. If there was an ore body there pitching to the north and I could see it I would not say there was none there.

Q. Did you not see an ore body in the north side of that excavation?

A. I saw ore on the north side of it.

Q. What was the width and thickness of it?

A. I do not know.

Q. I am talking of about how much of a face of ore could you see there?

A. I do not recollect what the exact dimensions were.

Q. What was it, about?

A. It probably nearly covers the whole face of it.

Q. And you could not tell what part of the ledge it was
514 that you saw?

A. Not on the slight development that was there.

Q. In order to have a floor of an ore chamber—in a technical mining sense, we will use it—you will first have to find a ledge and commence going down on that ledge?

A. Not at all.

Q. What is an incline winze?

A. It is a shaft or opening sunk in the ground that runs at an inclination from the vertical.

Q. State what you would term, as a mining man, this excavation that you call the ore chamber. What would you term it in a mining sense?

A. I should call it an ore chamber.

Q. Simply an ore chamber?

A. Yes.

Q. Do ore chambers have floors?

A. Certainly; the bottom is called a floor, in mining parlance, always.

Q. The lowest part of the chamber is called the floor?

A. Floor or bottom.

Q. Supposing the lowest part of the excavation has no ore in it, where is the floor of that excavation—the lowest part, is it not?

A. Exactly.

Q. Now, then, we will see. In this instance, supposing that the lower part of that chamber had no ore in it, that would still be the floor, notwithstanding?

A. The floor of the chamber; yes.

Q. You saw ore on the north side of the chamber, did you not?

A. Yes.

515 Q. And you never measured the extent of that ore?

A. I do not think I did.

Q. Did you take the dip and course of the ore body in the thirty-eight-foot level?

A. I presume I did.

Q. Did you determine from your inspection of that mine that the ore from the surface clear down into the ore chamber was one connected and continuous body of ore?

A. I think not.

Q. Did you think that the body of ore in "A," "B," and "C" were entirely separate and disconnected bodies from those down in the lower workings of the mine that you visited?

A. Yes.

Q. Did you examine the ore in the easterly branch of the main tunnel so marked on the map in an upraise there immediately in front or near this winze No. 1?

A. I did.

Q. Did you consider the ore in that upraise disconnected with the ore down in the ore chamber?

A. There is one point there where I think it was.

Q. Did it not run to the thirty-foot level and down into the ore chamber and you could plainly trace it?

A. I think that you could make a tracing up through it.

Q. From the upraise in winze No. 1, in the easterly branch of the main tunnel, could you not trace the ore in that upraise through the thirty-eight-foot level down into the ore chamber, and was it not one connected body of ore?

A. I do not call it a body of ore. I think you could make what would be called an ore tracing.

516 Q. What would you call an ore tracing?

A. To trace ore around would be very much less than a body of ore.

Q. Was there not a ledge plainly discernible which you could trace from this upraise clear down into this fifty-five-foot level?

A. I do not recollect positively about that.

Q. Did you use your compass at the point of location to see which way the vein ran?

A. I think I did. I am quite certain I did.

Q. Do you remember now which way it ran?

A. No; only just a general idea of the course.

CHAS. FORMAN.

517 H. W. COFFIN, a witness called on behalf of complainant, sworn:

Mr. REDDY:

Q. State your age, occupation, and place of residence.

A. Age, twenty-eight; occupation, mining and assaying; residence, Belleville, Esmeralda county, Nevada.

Q. How long is it since you learned the business of assaying?

A. It is about thirteen years since.

Q. Have you been practicing that profession since, more or less?

A. Yes.

Q. How long have you been engaged in mining?

A. Off and on for the same period.

Q. Have you mined in different parts of the State of Nevada?

A. Yes.

Q. Have you mined any in California?

A. No.

Q. Your mining has been done in the State of Nevada?

A. Yes.

Q. At what points have you been engaged in mining?

A. In Tuscarora, Jefferson Canón, Candalaria; that is all—some in milling.

Q. You mined for a time in California, did you not, in the Stirling mine?

A. Yes.

Q. That would be about the extent of your mining experience?
A. Yes.
Q. You follow the business of assaying along with mining?
A. Yes.
Q. What is your present occupation?
518 A. Superintendent of the Belleville mills.
Q. Where are those situated?
A. At Belleville.
Q. For what company?
A. The Holmes Mining Company.
Q. How long have you occupied that position?
A. About five months.
Q. Had you worked there before in other capacities?
A. Yes; I worked for the Northern Belle Company two years and a half.
Q. What did you do before that?
A. Assaying.
Q. Do you know a mine in the New Coso mining district, Inyo county, California, called the Stirling mine?
A. Yes.
Q. Have you visited that mine?
A. Yes.
Q. When did you first visit it?
A. About March the 9th—between the 6th and 9th.
Q. What year?
A. 1884.
Q. How did you come to visit that place?
A. To act as superintendent.
Q. By whom were you employed?
A. By Mr. Yerington, as president of the Southern Development Company.
Q. Who went with you to the mine, if any one?
A. Mr. Yerington, Governor Adams, George White—there were two of us went in the wagon.
Q. I mean on the same day.
A. Frank Silva and a young man named Joseph Hilario.
519 Q. State whether you were put in possession of that mine at that time or not.
A. Yes.
Q. Mr. Frank Silva you say was there?
A. Yes.
Q. And the possession of the mine was then delivered over to Mr. Yerington and yourself?
A. Yes.
Q. Did you employ any men under you to work in the mine?
A. Yes.
Q. Who were they?
A. Mr. Yerington employed Mr. Silva to act as foreman.
Q. Under you?
A. Yes. I employed, not on that day but within a few days, this Joseph Hilario, a man by the name of Flannigan, and Gilbert

Christy; those were about the first; further than that I cannot remember.

Q. What was the first work done; were any tools turned over to you?

A. No.

Q. Were there any tools on the mine when you went there, that you knew of?

A. There might have been a few old tools of no consequence, of which I took no notice.

Q. You were not informed by Silva there were any tools there?

A. No.

Q. Now state what you set Frank Silva doing.

A. To go to work in the eighty-two-foot level face, run from the bottom of winze No. 1, such as removing old dirt and fixing up the windlass, etc.

Q. State what work you started to do in the way of repairing the mine. Was it to drive that level called the eighty-two-foot level?

520 A. Yes; to drive it in a southerly direction.

Q. What was the purpose of that drift?

A. To get under the body of ore supposed to exist in and below the ore chamber.

Q. To connect with the ore chamber. Was the drift to connect with the ore chamber?

A. It was to run under it and finally connect.

Q. How long did Mr. Silva continue to work in the face of that drift?

A. About twelve days.

Q. How far did he drive it?

A. Somewhere in the neighborhood of half way.

Q. From the points where you commenced to a connection with the ore chamber?

A. To a point underneath the ore chamber; twenty-five feet below, about.

Q. Why did he cease working, if you know; what reasons did he give, if he did cease working?

A. He ceased working; laid off, and said he was sick.

Q. Did he leave the mine and premises?

A. Yes.

Q. Where did he say he was going to?

A. Darwin.

Q. How far was that distant from the mine?

A. Twelve miles.

Q. Did you continue to work on to a point under the ore chamber?

A. I intended to, but the survey given me was incorrect and the direction given to me to run was wrong.

Q. Did you finally drive on to a point under the ore chamber?

521 A. And beyond.

Q. How far beyond; does what is marked the eighty-two-

foot level on the map show the distance you drove it, and where you drove it to?

A. I drove it until I struck the blue lime, and then I quit.

Q. What kind of rock had you been driving; what is the character of rock from winze No. 1 to the point where you encountered the blue lime?

A. White lime.

Q. State if you afterwards raised up from the eighty-two-foot level to connect with the ore chamber?

A. Yes.

Q. What was the distance from the eighty-two-foot level up to the ore chamber?

A. About twenty-seven feet vertical.

Q. At what point did you make the connection in the ore chamber; is there any place on the map which would indicate the point of connection?

A. Yes.

Q. Point it out.

A. At the southeasterly corner; at a point marked on the map "hole."

Q. Through what kind of a rock did you pass in going from the eighty-two-foot level to the connection with the ore chamber?

A. Lime.

(An adjournment was here taken until to-morrow morning at 9.30.)

522 FRIDAY, *June* 11, 1886.

(Counsel and parties met pursuant to adjournment.)

H. W. COFFIN recalled by complainant.

Mr. REDDY:

Q. Did you ever clean out the ore chamber?

A. Yes, sir.

Q. Had it been cleaned out before you made the connection from below?

A. No, sir.

Q. When you raised up into the chamber what did you find—any loose earth?

A. Yes, sir.

Q. Look at the model marked "Complainant's Exhibit No. 2" and point out the place where you made the connection from the 82-foot level with the ore chamber.

A. The southeast corner.

Q. Is there any particular object or mark there to indicate where you connected?

A. This hole.

Q. What is marked on the map as "hole?"

A. Yes, sir.

Q. And in the model how does it appear—a small hole sunk down from the ore chamber?

A. Yes, sir.

Q. When you raised into that hole the loose earth poured down into the opening?

A. Yes, sir.

Q. Did you enter from that point and clean out the chamber, or did you clean it out by some other means?

A. That way and through the winze No. 2; both ways.

Q. Now, when you first went there, before doing any work,
523 what was the appearance of the ore chamber; can you describe by the model?

A. Yes, sir.

Q. Take your own course in describing that.

A. There was ore on the north and west sides. The bottom was covered with loose ore and waste to a depth of less than one foot to several feet. No hole was visible in this end.

Q. State whether what was represented there by the model as the ore chamber is a fair representation of the ore chamber.

A. It is.

Q. Up to the red lines, for instance, if that chamber was filled up with any material which would cover the bottom and sides up to the red lines, would that be a fair representation of the ore chamber as it was when you first saw it?

A. It would.

Q. On the sides, as I understand you, there was ore when you first went in?

A. Yes, sir.

Q. And you saw ore on all sides of the chamber—or state where the ore was.

A. Three sides were almost entirely composed of ore; the fourth not so much.

Q. How was it at the lower end of the chamber, which would be the easterly end?

A. The roof ran down within a couple of feet of the bottom. As you look into the corner—the east end—there was some ore to the left; none at all, hardly, to the right.

Q. What was the size of that chamber near the roof? What was the width across the chamber?

524 A. About nine feet.

Q. At the bottom, as it then stood, how wide was it, say, at the easterly end?

A. Very nearly the same; not quite so wide.

Q. Had it the appearance of a vein or deposit which was extending downwards?

A. Yes, sir.

Q. State if there was anything there to indicate that the vein or the deposit, whatever it might be termed, had given out or would give out in a short distance.

(Objected to by counsel for respondent on the ground it is leading and asks that the witness describe himself the appearance of that chamber.)

A. There was nothing to indicate it.

Q. State what the indications were in that respect when you first saw it.

A. The indications were that the deposit might be very extensive running down through the mine—further downward.

Q. You cleaned out the chamber, as I understand you, by means of a windlass, through winze No. 2, and also by letting a portion go down onto the 82-foot level?

A. Yes, sir.

Q. State whether you cleaned up the floor of the chamber and took out the waste.

A. Yes, sir.

Q. What did you find on the floor and sides of the chamber below the red lines?

525 (Objected to by counsel for respondent on the ground that it does not appear that there are any red lines in the ore chamber, and that it does not appear, from the testimony of this witness, how far down the ore on the sides of this chamber extended, and that it is assuming that this model is a correct representation of the ore chamber, which counsel denies.)

A. Lime.

Q. Was it solid?

A. Yes; in place.

Q. That was the condition of things when you removed the loose waste that was lying on it when you went there?

A. Yes; after removing the loose waste and ore.

Q. Loose ore?

A. Yes, sir.

Q. Did you have to remove any rock in place to reach the lime, or was it so as soon as you removed the waste and this ore?

(Objected to by counsel for respondent on the ground that the question is leading and suggests to the witness the answer desired.)

A. I removed nothing but loose dirt to find solid lime in place.

Q. Then that chamber had been worked down to lime before you touched it?

A. Certainly.

Q. Now, on the sides where the ore was—did you do any work there?

A. Yes, sir.

Q. After cleaning out the chamber?

A. Yes, sir.

Q. What did you do?

A. I took what ore there was down.

Q. What did you find behind the ore?

A. Waste.

526 Q. What character of waste?

A. Lime.

Q. And what you have said applies to all sides of the chamber where there was ore. You took down all the sides where it appeared?

A. Yes, sir.

Q. You found lime in each instance?

A. Yes, sir.

Q. Do I understand you to say that you took down all of the ore or sufficient to show that the walls were composed of lime in behind the ore that first appeared there?

A. Virtually it was all. There might be a few patches there. I took down all the ore which would pay to take down.

Q. And sufficient to show that there was a wall of lime behind?

A. Yes; undoubtedly.

Q. What was the character of that lime as to its being in place or in its natural position?

A. It had never been exposed before.

Q. It was simply lime in place?

A. Yes, sir.

Q. When that ore was taken out what then would be the walls of the chamber?

A. Lime.

Q. You had a lime floor and lime walls on the sides after taking down that ore?

A. Yes; with the exception of little blotches of ore.

Q. Do you know how much ore you took out there?

A. Yes, sir. I know how much was sold. I took out all that was sold.

Q. How much would that be?

527 A. I have been told it was thirty-six tons.

Q. How did that compare, in your own judgment, as to the quantity?

A. I had overestimated it.

Q. How much is your estimate—what number of tons?

A. I think in the neighborhood of twenty-five or thirty tons; more than 36.

Q. From that particular place?

A. Yes, sir.

Q. Was there some ore taken out from other parts of the mine which went to make up this thirty-six tons?

A. A trifling amount; I do not think half a ton. I wish to explain that. I took out of the chamber and right adjacent to it that ore. I am mistaken in saying every bit came out of the chamber; right adjacent to it—winze No. 2.

Q. How many men did you work in that chamber in taking out that ore and stripping the walls?

A. I do not think to exceed four in the ore I have mentioned.

Q. Were you there each day and nearly all the time with the men in that chamber?

A. I would go down the mine a number of times a day; I would not stay there all the time.

Q. State whether you found anything peculiar in that ore or that chamber in the way of work of any kind.

(Objected to by counsel for respondent as leading, immaterial, and irrelevant whether the thing was peculiar to the witness or not or to any other person.)

528 A. The men I had there called my attention to drill holes and also to this hole in this easterly end marked "easterly side of ore chamber" on the model.

Q. With which you connected on the 82-foot level?

A. Yes, sir.

Q. And which you say was lime all the way up?

A. Yes, sir.

Q. How many drill holes did your men call your attention to and how many did you observe?

A. In the chamber?

Q. Yes, sir.

A. About seven.

Q. Where were they, in ore?

A. In ore and waste combined.

Q. It started in ore?

A. Yes, sir.

Q. Can you state the depth of the deepest hole that you found?

A. About three feet.

Q. Started in ore?

A. Yes, sir.

Q. Did it go through into any kind of rock?

A. No; that particular hole stopped in ore.

Q. Now, the next one in depth, which would be the second one; how deep would that be?

A. The holes would all average from about eighteen inches up to about three feet; I cannot recall the exact depth of each hole.

Q. State whether the other drill holes, the drill holes other than the one first named, passed through the ore and into any other kind of rock?

A. They did; they started in ore and ended in lime rock.

529 Q. Then state whether it is possible for a man drilling a hole which is started in ore to know, by the pulp or by any other means, when the drill passes through the ore and enters another kind of rock—for instance, lime rock.

(Objected to by counsel for respondent on the ground that the question is leading and that it does not appear that the witness is competent to testify whether pulp comes out of a drill or not; that it does not appear whether he ever handled a drill in his life or not, or is capable of distinguishing pulp of one kind of rock and pulp of another kind of rock, and is, therefore, not competent to give an opinion as to what another man might do, nor does it appear that the party who drilled the holes was able to tell what kind of pulp it was that came out of them; further, that it does not appear that the respondent in this action ever drilled any of those holes or was in any

way connected with the said holes, and that it is irrelevant, immaterial, and incompetent.)

A. I should consider it very easily distinguished in that mine.
Q. What was the color of the limestone?
A. White.
Q. What was the color of the ore in that chamber?
A. Very dark.
Q. Ferruginous ore?
A. Yes, sir.
Q. And the color would be some tinge of iron?
530 A. Yes, sir.
Q. Dark red?
A. It was very dark.
Q. What, then, would be the difference in color of the pulp while drilling in the ferruginous matter and the pulp when drilled in the white lime rock?
A. One difference would be the color; another difference would be if it was assayed.
Q. State whether such drill holes as you found there in the chamber were sufficient to prospect that ore and determine its thickness.

(Objected to by counsel for respondent on the ground that it is immaterial, irrelevant, and incompetent, and that it does not appear that the witness knows the exact depth of the holes or that he saw the end of any of the holes; nor does it appear that the respondent was in any way connected with these holes or knew anything about them.)

A. Yes, sir.
531 Q. State whether after taking down the ore at the points it was pierced by drill holes, if you can see where the end of the hole entered the lime or the bottom part of the whole.

(Objected to by counsel for respondent that the question is leading.)

A. Certainly.
Q. State whether the holes that you found in that ore had ever been blasted—that is to say, whether it had been charged in the usual way with powder and the powder exploded.

(Objected to by counsel for respondent on the ground that it is leading, and it does not appear that the witness is competent to testify on that subject; nor that he ever examined the holes for the purpose of determining that proposition.)

A. No.
Q. What are the holes of the character named used for in the ordinary course of mining?
A. To break ground.
Q. How were they used for that purpose?
A. By being blasted.

Q. State whether you found any drill holes in any other portion of the mine drilled through ore in the same manner as the ones you have described in the chamber.

A. Yes.

Q. Will you be kind enough to point out the drill holes of the character named?

A. They are not all there.

Q. Are there any indicated in the model?

A. There were at least two in winze number two.

532 Q. Can you designate in what part—whether in the red or white?

A. They were in the red.

Q. The red indicates ore?

A. Yes.

Q. You found two there?

A. At least two.

Q. What was the depth of those holes?

A. I cannot give the depth of any particular hole; they would average from about eighteen inches to three feet.

Q. State whether you took down the ore—broke off the ore—in which those holes were drilled.

A. Yes.

Q. State whether the holes pierced through the ore and entered in the lime rock, if it was lime rock behind the ore.

A. They did.

Q. State whether you found those holes to go clear through the ore and into the lime rock and behind.

A. Yes.

Q. After taking down the ore, state whether you found any portion of the hole in the lime rock remaining behind.

(Objected to by counsel for respondent as leading, irrelevant, immaterial, and incompetent.)

A. I always found a portion of the hole in the lime rock, except in one instance.

Q. Were these holes that you have spoken of last ever blasted?

A. No.

Q. Did you find holes at any other portion of the mine?

A. Yes.

Q. Can you indicate where you found them?

A. I can indicate on the map.

533 Q. Do so.

A. I found one in the face of the south drift from winze No. 1, eighty-two-foot level.

Q. At that point marked "drill hole" on the map?

A. Yes.

(Counsel for respondent objects to the question, and moves that the answer be stricken out as to any holes outside of those in the chamber on the ground that they are not embraced within the pleadings in this action, and that the holes mentioned in the pleadings are only the holes mentioned in the ore chamber and no other

place, and also on the ground that it is incompetent, immaterial, and irrelevant.)

A. I found one or more in the place called "ore streak," in yellow, in the fifty-five-foot level.

(Same objection and same motion to strike out by counsel for respondent.)

Q. State the depth of those holes.
A. About the same average.
Q. Were those holes started in ore?
A. Yes.
Q. State whether they passed through the ore and into the country rock.
A. They did.
Q. Did you take down the ore at those places?
A. Yes.
Q. State whether you found any part of the whole remaining after taking down the ore.
A. I did.
Q. State whether those holes had ever been blasted in the sense in which I use that term.
A. No.
534 Q. Did you find drill holes at any other point?

(Objected to by counsel for respondent on the ground that it is immaterial, irrelevant, and incompetent and not embraced within the pleadings, the only holes referred to being those in the ore chamber.)

A. I cannot recall. We found a dozen or more. I cannot recall each instance.
Q. How far had the eighty-two-foot level been advanced from winze No. 1 at the time you took charge of the mine?
A. It had been advanced to a point about "D. E." on the map.
Q. In what condition were the holes which you have described found—were they open or were they filled?
A. When found they were open. We would have found them sooner if they had not been filled at the mouth.
Q. When you first entered that chamber and examined the mine were there any drill holes to be seen in that chamber?
A. No.
Q. Were the drill holes open and to be seen before any work was done in these other points that you speak of in the ore?
A. No.
Q. How were the drill holes discovered?
A. In breaking down the ore.
Q. It was the work, then, done by the miners under your charge which exposed these drill holes?
A. Yes.

(Counsel for respondent objects to the question, and moves to strike

out the answer on the ground that the evidence is irrelevant,
535 immaterial, incompetent, and hearsay. It appears that the knowledge of the witness, so far as these holes are concerned, are derived from statements of others made not in the presence of the defendant, and nothing to show by the testimony that the witness knows of his own knowledge anything about the taking out of these holes by breaking down the ore, nor does it appear that the defendant knew anything about it.)

Q. You may now state in your own way how you came to a knowledge, if you have a knowledge, of the existence of these holes.

A. It was my custom to go down the mine early in the morning and a number of times during the day. On going down, I think, the second or third time of the day the first hole was discovered my attention was called to it, and so on with all the others, excepting one at the face of the south drift, winze No. 1, eighty-two-foot level. This one Mr. Price had been working, taking down ore, and I came along, passed some remark to him about drill holes, began examining the work, and found one which had not been seen before, to my knowledge, by any person.

Q. State how you discovered each drill hole, and the examination you made of it each time when your attention was called to them by the men.

A. I examined the hole, found it perfectly smooth—not powder-burned, and we would pick up the spoon or anything handy to determine about the depth of the hole; about the same course with all.

Q. Was your attention called to any hole which had been
536 broken down, or part of which had been broken down? After breaking the ground around the hole was your attention called to it?

A. No hole was discovered until ore had been broken.

Q. State whether you would find the hold in pieces detached.

A. The ore was generally of too soft a nature to leave the hole in the detached part.

Q. Was your attention called to any hole in the ore chamber before the hole was broken or disturbed? I understand you to say it was not until after the breaking of the ore that your attention was called to them.

A. Not to my knowledge.

Q. I understand you also to say that you examined the chamber, and if there had been any open drill holes in the chamber you would have seen them before the work was commenced?

A. I think so.

Q. And the same at the other points?

A. Yes.

Q. What drills were there at the mine when you went there, if any—that is to say, what drills did you see?

A. I am not clear on the subject of tools and implements; there were a few. They were of no consequence and no notice was taken of them.

Q. There were a few drills?

A. I think there were a few drills, and possibly an old pick and shovel.

Q. What was the length of the longest drill that you saw there?

A. If there were any I think they were very short—what
537 would be called starters.

Q. What would be the length of each drill?

A. In the neighborhood of ten inches.

Q. What was the size of these holes that remained in the wall, the bottom part of the hole, that you would find in the lime, for instance?

A. I think about three-quarters, or smaller—in that neighborhood. I did not measure them.

Q. I will ask you if you saw any drill on the place when you first went there, of any length, to drill the holes in question?

A. No; I might state that I afterwards saw a drill.

Q. I am coming to that. I mean when you first went there?

A. No; I did not.

Q. Did you at any time afterwards discover a drill sufficient in length and in size to have made the holes you discovered?

(Objected to by counsel for respondent on the ground that the question is leading, immaterial, and irrelevant. It does not appear that the defendant is connected in any way with the drills which may have been found in the mine by the witness or these holes that may have been drilled in that mine.)

A. I afterwards saw a drill about six feet long. I do not remember whether I found it or some one else found it and called my attention to it.

Q. Do you know in what vicinity it was found?

A. My impression is it was found to the left of the main tunnel of the mine.

538 Q. Inside or outside?

A. Outside, on the hills.

Q. State, if you know, whether that drill had been used.

A. Yes; I think it had.

Q. How do you know it had been used?

A. The point was dull and the other end was burred.

Q. By what?

A. By being hammered.

Q. State whether any such drill as the one you have just described was brought there by you or under your direction.

A. No, sir.

Q. State whether any of the holes in question were made by your order or direction.

A. No, sir.

Q. During the time you were there, in view of the number of visits which you made to the mine, could such holes have been drilled by your men without your knowing it?

A. I think not.

Q. Who were the men that worked in the mine under you; were they simply day laborers; had they any interest in the property?

A. No interest whatever—that is, to my knowledge.
Q. How long had you been working in the chamber until some of these drill holes were discovered?
A. About a month.
Q. In the chamber?
A. No, sir.
Q. How long had you been working in the chamber?
A. A very few days.
Q. Can you fix about the number of days?
A. I cannot say to the exact number of days.
539 Q. I will ask you now if you examined the mine from the ore chamber up as far as any work extended?
A. Yes, sir.
Q. How far did the work extend from there to the surface?
A. To the east drift of the main tunnel.
Q. State whether you took out any ore from the ore chamber up to the east drift.
A. Yes, sir.
Q. State whether you took out all the ore between those two points—that is to say, all which a miner would take out in the regular course of mining.

(Objected to by counsel for respondent on the ground that it is leading, immaterial, and irrelevant.)

A. I took out all, and more than I was justified in taking out as a miner.
Q. What is the kind of rock there throughout that mine?
A. Lime rock
Q. On either side?
A. Yes, sir.
Q. What is the nature of the rock between the lime and that which you would call vein matter?
A. It is, generally, a sort of oxidized ore; mostly iron.
Q. You did not take that out—that iron rock; that is, the most of it?
A. No, sir.
Q. You left the iron behind?
A. Yes, sir.
Q. You were simply desirous of taking out the ore in the mine and the paying rock?
A. Yes, sir.
Q. Did you assay the ore taken out between those two points and in the chamber?

540 (Objected to by counsel for respondent on the ground that it does not appear that the witness is a competent assayer and knows sufficient of the business to make a competent assay, and that it is immaterial, irrelevant, and incompetent.)

A. Yes, sir.
Q. What did the ore taken out between those points average?
A. In the neighborhood of twenty ounces in silver.

Q. And what percentage of lead?
A. About forty to fifty per cent.
Q. Did you assay any of this iron rock?
A. Yes, sir.
Q. What would that go in lead?
A. Well, some of it carried hardly anything, some none at all, and other points very little.
Q. Did it carry sufficient to make it valuable for lead?
A. No, sir.
Q. What did this iron rock go in silver?
A. From a trace to several dollars.
Q. About how high would it average?
A. I considered when I got an assay out of it to exceed a couple of dollars that I had got a little ore in it.
Q. Was that ore of any value, considering the silver and lead in it?
A. No, sir.
Q. Now, from the east drift to the surface, did you examine the mine from there up to the surface?
A. I examined and mined a little near the surface.
541 Q. Did you examine that place with a view of taking out ore?
A. Yes; I examined every part of the mine.
Q. In that portion did you do any mining, and to what extent?
A. I did very little.
Q. Why did you do very little?
A. I could not extract any ore to speak of.
Q. Why not?
A. Because it gave out.
Q. Was there iron ore in that section of the mine?
A. Yes, sir.
Q. The same as you have described between the ore chamber and the other level mentioned?
A. Yes, sir.
Q. State whether there was any ore at all to be found in connection with that iron rock, or was there any ore left in the ground which we are inquiring about, namely, from the east drift to the surface.
A. Very little.
Q. Why did you leave that little?
A. It would not pay for its extraction and assorting.
Q. Not sufficient to pay for its extraction and assorting and putting it on the dump?
A. Yes, sir.
Q. Did you assay ore and iron rock from that part of the mine?
A. Yes, sir.
Q. With what results, so far as the ore is concerned? What was the assay value of the mine?
A. With the result that it was not of sufficiently high grade to extract.

542 Q. What would be the average assay value of the ore above the tunnel?

A. By picking choice lots, about the same average as the ore I had extracted below the tunnel level.

Q. What would be the value of the ore there now, exclusive of the iron, by taking it out as it occurred—as you found it—without picking or assorting the better quality?

A. I should say about eleven ounces.

Q. Would that be of any value in that country?

A. None whatever to us.

Q. Why?

A. Not of sufficiently high grade to pay expenses.

Q. State whether the openings, marked on the map "A," "B," and "C," were connected with the works which you have been describing.

A. Opening "C" was connected both with the main tunnel and the east branch.

Q. How about "A" and "B?"

A. "A" and "B," my recollection is, there was no connection with.

Q. In your time?

A. In my time.

Q. Did you do any mining there?

A. Yes, sir.

Q. What did you find there?

A. I found a little ore, and I found that it petered out.

Q. Had there been any work done down below, at a point that was to be seen when you first went out, which showed to a person who did the work that the ore had petered out?

543 (Objected to by counsel for respondent as irrelevant, immaterial, and incompetent and not confined to the issues.)

A. Yes, sir; I would like to make an explanation.

Q. You may explain that.

A. From what is termed on the map the westerly branch to the main tunnel there were stopes run up.

Q. Right into this ground?

A. Right in the ledge, up towards these cuts.

Q. Were those stopes open and to be seen or did you have to clear out waste to get to them?

A. They were open.

Q. These stopes would show that there was no considerable quantity of ore at "A" or "B?"

A. They would show that the ore was not continuous in the ledge to the westerly branch of the main tunnel.

Q. How about quantity?

A. No quantity of it at all.

Q. You mean to say that the stopes developed the fact that there was no quantity of ore at those points?

A. Yes, sir.

Q. That was to be seen from the start, at that point?

A. It was to be seen from the tunnel level and from the upper point, after doing a few days' work.

Q. I will ask you, Mr. Coffin, if you are familiar with the place marked on the map "point of location?"

A. Yes, sir.

Q. I will ask you if, when you took charge of the mine,
544 there was any fresh work there—any work done recently, before you had taken charge?

A. Not from the appearances; no work at all.

Q. I will ask you to describe the point of location, the works at that point?

A. There was a sort of an opening cut, and then it extended a a little into the hill a few feet; it then turned off to the left; it was laid over with logs and brush—a fireplace cut in there and used as a sort of kitchen and cooking place. There was a small ledge of galena ore shown on both sides of the cut, to the right and left, as you went into it.

Q. State whether it was a fair prospect for ore?

A. It looked very fine.

Q. Was there any evidence there at the time you examined it of the ledge having been followed downwards?

A. No, sir; none whatever.

Q. What was the appearance—that it had not been?

A. Yes, sir.

Q. State whether you did any work at that point while you were in charge.

A. I went to sink on this ore that appeared on both sides of the cut and found that there had already been a hole sunk there, which developed the fact that I was trying to find out if this ore continued down.

Q. How deep was the hole?

A. About seven feet.

Q. Down about seven feet?

A. Yes, sir.

545 Q. What became of the ore streak?

A. It pinched out.

Q. Entirely?

A. Yes, sir.

Q. What remained was country rock?

A. Yes, sir.

Q. Was the country rock at that point composed of lime?

A. Yes, sir.

Q. As I understand you, then there had been a hole sunk down there about seven feet in depth?

A. Yes, sir.

Q. And in that hole you could see that the ore had given out and the country rock had come together?

A. Yes; the ore that had run through the hole was extracted; the hole was filled with debris, and in the bottom and on the sides the ore had given out.

Q. The hole was sufficient without further working to satisfy you, and you could see there was no use going any further, as there was nothing to follow, neither vein nor ore?

A. Nothing whatever.

Q. State whether when you first visited the place there there was anything to show that such a hole existed or had been made there?

A. Nothing whatever.

Q. The ground around had been tramped over by the parties using the place as a kitchen?

A. Yes, sir.

Q. The hole was entirely concealed?

A. Yes, sir.

Q. As I understand, the filling between the opening and the lime rock was ore in place and this iron rock that you have described?

A. In the hole at the point of discovery.

Q. I am speaking of the filling of the vein—the opening;
546 the fissure in the lime rock was composed of iron and, in places, lead ore. Was there anything else in the way of filling—any other kind of rock—quartz or anything?

A. Very little quartz.

Q. I will ask you if the model, as it stands now, without any filling at all in the ore chamber, represents fairly the ore chamber after you cleaned out the waste?

A. Yes, sir.

Q. I will ask you if by filling the ore chamber, as represented in the model, up to the red lines it would represent the ore chamber as it was when you first went in?

A. Yes, sir.

Q. Then, by filling the ore chamber with sand and other matter up to the red lines, we have a view of the ore chamber as it was when you first entered the mine?

A. Yes, sir.

Q. And if you poured that sand out of the ore chamber you would have a view of the ore chamber as it appeared after you cleaned the waste out of it?

A. Yes.

Q. The point in the northeast corner of the chamber marked on the map "hole;" could that be seen when you went into the chamber and before cleaning out the waste?

A. Is not that the southeast corner?

Q. Could it be seen when you entered the chamber before cleaning out the waste?

A. No, sir.

Q. That was entirely concealed?

A. Yes, sir.

Q. How deep had that hole been sunk originally and before you connected with it on the 82-foot level?

547 A. About four feet in depth.

Q. What kind of rock was it sunk in?

A. Lime.

Q. State whether the sinking of that hole would show the character of the rock in the floor of that ore chamber.

A. Yes, sir.

Q. Were there any drill holes on either side of that place marked on the map "hole?"
A. In the hole?
Q. Yes, sir.
A. Not to my recollection.
Q. That was pure lime?
A. That was lime.
Q. Was there any ore in it on any side of it?
A. Not to my knowledge; there might have been a stain or something like that.

Cross-examination:

Mr. MINER:

Q. Are you in the employ of the Southern Development Company at the present time?
A. No, sir.
Q. Are you in the employment of Mr. Yerington or any one connected with that company?
A. I am in the employ of no one but the Holmes Company.
Q. Where are you employed?
A. At Belleville.
Q. Who pays your expenses up here?
A. I do not know. I expect the Southern Development Company to pay them.
Q. Were you subpœnaed here?
A. No, sir.
Q. You came, then, as a voluntary witness?
A. Yes.
548 Q. Did you have any understanding with them that you were to be paid your expenses?
A. None whatever. I might say that I came here on a pass.
Q. Over what railroad?
A. The Carson and Colorado and the Virginia and Truckee.
Q. Have you been furnished any money since you quit working the Stirling mine up to the present time by Mr. Yerington or the Southern Development Company of Nevada or any person connected with them?
A. I have never received a cent from any of those parties since I quit the employ at the Stirling mine, the time of the suit at Independence.
Q. Did that company or Mr. Yerington obtain for you the situation which you now have?
A. No; they had nothing in the world to do with it, to my knowledge.
Q. Have you kept them informed of your whereabouts since you quit the Stirling mine?
A. I think once when I was going to Old Mexico I notified Mr. Yerington that I was going down there.
Q. Why did you notify him?
A. So that he would know where I was if he wanted me.

Q. If he wanted you for what?

A. I did not know but what he might have another job or might want me in this case. I did not know what. I was out of employment at that time—that is, until the day I went to Mexico.

Q. You are twenty-eight years old, I believe?

A. Yes.

549 Q. How many years have you actually worked in mines in your life?

A. What do you term work?

Q. That you have worked inside of a mine.

A. Hammering a drill or with shovel or pick?

Q. Doing any kind of work inside of a mine, under the surface of the ground, all put together?

A. Surveying?

Q. Surveying is not working a mine.

A. You say anything.

Q. Any kind of work in a mining sense, under ground, in a mine. How many years have you been engaged in it?

A. I cannot state the number of days that I have shoveled anything. I have repeatedly taken samples in a mine and at times given a hand at something if I happened along and it was needed. I have never been employed in the capacity of taking down ore or anything of that sort at manual labor.

Q. Did you ever work as an ordinary miner in a mine?

A. No.

Q. Did you ever handle a drill, working as a miner, and driving drifts, tunnels, or running cuts?

A. I do not know exactly how to get at that. I have drilled a little, but not paid for it.

Q. What kind of drilling did you do and what did you do it for?

A. I did it to see how it was done.

Q. How often did you drill that way?

A. I do not know.

550 Q. Did you drill six hours altogether in your life?

A. I think I drilled more.

Q. More than six hours?

A. Yes.

Q. Just to see how it was done?

A. To get the idea of it.

Q. And you did it for curiosity and not as a laborer?

A. I did it to get the character of the thing.

Q. Would it extend into a whole day's work?

A. I do not know; it was a few minutes at a time; I have watched it by the hour.

Q. Now, then, did you ever work in a mine as a laborer, with a pick?

A. I never did.

Q. Did you ever work in a mine as a laborer with a shovel?

A. I never did.

Q. Then your connection with mines has been in some light occupation about a mine?

A. Yes.

Q. What occupation, generally; what position?

A. Sometimes in charge, other times sampling, other times surveying or helping survey; little minor things like that; I cannot recall everything I did in a mine.

Q. In all the mines you have had charge of have you not always had a miner in charge as foreman, to whom you left the work of actual mining?

A. Not altogether.

Q. Have you not always had some man under you who knew more mining than you knew, for the very reason that you were not very well versed in it?

A. Not always.

551 Q. Have you at any time?

A. Yes.

Q. Did you ever have charge of any mine like that of the Stirling mine?

A. No.

Q. That is the first lead mine you ever had charge of?

A. Yes.

Q. The first one?

A. Yes.

Q. Then you do not know much about ores of that character, do you—such as exist in the Stirling mine?

A. Do you mean their assay value?

Q. As to the ores in every respect, such as are in that mine.

A. I know a limited amount about them.

Q. You never worked in those kind of ores, did you?

A. In what sense?

Q. Working them, digging them, handling them, and shoveling them.

A. I testified I never handled a pick or shovel in a mine—manual labor.

Q. Did you ever examine mines of the character of the Stirling mine, with ores of that kind and a formation of that kind?

A. I have looked over several.

Q. What mines?

A. I cannot recall the names of the mines. I looked over several mines right in Darwin and adjacent to it.

Q. What did you look over them for?

A. To see what they looked like and how the ore was.

Q. Do you know that it was the same as the Stirling mine?

A. It was in the same formation and the same character of

552 ore.

Q. Name some of the mines that were in the same formation and the same character of ore.

A. I just told you I did not remember the names of them.

Q. Where were they situated?

A. One owned by an old fellow that has been down there in Dar-

win a number of years; I cannot think of his name. By the way, I went down a short distance in the Defiance.

Q. Is that the same character of ore as the Stirling?

A. Yes; it is the same character of ore as in the Stirling; some of the same character that I saw.

Q. Does that have this iron ore in it?

A. I said some of the same character.

Q. I do not mean all. I am asking you now comparing things.

A. I do not know.

Q. Do you know the difference between carbonate ore and this iron ore by looking at it?

A. Yes.

Q. Do you know the value of it by looking at it?

A. No.

Q. How do you know what the value of the ore is in that mine until you take it out and work it or assay it at the present time?

A. I said the character; I did not say the value.

Q. Do you know what the value of the ore is in the Stirling mine to-day? Would you swear what the value of that ore is in that Stirling mine to-day?

A. The exact value?

553 Q. If you know it you know it; if you know the value of it by looking at it you can state it.

A. I did not say I knew the value by looking at it.

Q. Do you know what the value of the ore is in the Stirling mine to-day?

A. I know about the value.

Q. How do you know about the value of it?

A. From numerous assays, extracting the ore and averaging it and sampling it.

Q. Is the ore in there yet like that which you assayed and sampled and took out?

A. Very little of it.

Q. There is some there yet?

A. Very little.

Q. Can you look beyond the face of a drift and tell how far that ore extends?

A. No.

Q. Then how do you know how much there is?

A. It is exposed at different points.

Q. And then you judge there is not much more than what you can see; is that your idea?

A. I judge if you have got a little streak of iron and a little ore in it, and it is cut at two points, and you can see those two ends, it is generally termed seeing it.

Q. Did you ever explore the territory commencing at the north side of this ore chamber that you have spoken of on the fifty-five foot level and run a northeasterly direction on a level with the floor of that chamber for a distance of fifty or sixty feet? Did you explore through that territory?

554 A. No.

Q. Then you do not know what exists in that?

A. Not positively.

Q. What has been your knowledge of iron ore, this iron ore that you have talked about?

A. Such ores are very general. I have assayed them most every place I have been in.

Q. The same kind of iron ore that you saw in the Stirling mine?

A. Virtually the same in silver and oxide of iron. It is an oxidized ore, to all appearances the same, and the value the same.

Q. Was not the richest ore you took out of the Stirling mine mixed up with this oxidized ore, as you term it?

A. No.

Q. Was it in a separate body, by itself?

A. This iron has run more or less all through that mine.

Q. Does it exist in any separate ledge, by itself?

A. It is mixed.

Q. With the other ore?

A. Yes.

Q. The ore in that mine carries iron, silver, and lead all in the same body. Is not that true?

A. What I mean is this, that there might be iron within a few feet of the best ore I got, possibly closer.

Q. Is there in any given place in that mine one deposit or ledge which carries all three of these metals—iron, silver, and lead?

A. Yes.

555 Q. Did you ever see three separate ledges or three separate bodies in that mine, one being lead ore, one being silver ore, and one being iron ore?

A. Not to my knowledge.

Q. Then it is all mixed up in the one mess?

A. You asked me if I saw three distinct ones.

Q. Yes. When you see one you see them all, do you not?

A. I did not say that.

Q. It is all mixed up in one mess, is it not?

A. There may be traces of iron in ore and traces of silver in iron or lead ores or in both.

Q. Did you ever make an assay of any ore out of that mine which did not show one of these elements or all of them—iron, silver, and lead?

A. Which did not show one of them?

Q. All of them. In every assay you made did they not show iron, silver, and lead?

A. When I say iron, lead, and silver I mean ores which were valuable for lead or silver. Traces I took into no account.

Q. What did you assay for—what were you trying to find when you assayed?

A. Lead and silver.

Q. Then you only assayed for lead and silver?

A. That is all.

Q. Did you find lead and silver in every one you assayed?

A. I assayed for gold, too.

Q. Did you find lead, silver, and gold in all these assays?

A. I do not think I found any gold.

556 Q. How many assays did you make, about?

A. I have no idea. The first two days I probably made fifty.

Q. In every one of the fifty you found iron, lead, and silver?

A. I do not say I assayed every one of those for each. If I was satisfied a piece was full of lead and carried sixty or seventy per cent. I assayed that for silver.

Q. Sometimes you would assay for silver?

A. Certainly; if I was satisfied there was sufficient lead.

Q. How do you know this was iron ore if you never assayed for iron?

A. I know by the looks. I have assayed for iron, but not there?

Q. I am not suggesting what you did here before. Did you assay for iron in that ore that you took out of the Stirling mine?

A. No.

Q. Then, for all you know, there is more lead and silver in that ore than there is iron?

A. I know that there is not.

Q. There is not?

A. No.

Q. Is there more iron in the ore in that Stirling mine than lead or silver?

A. In the mine there is more oxide of iron—what they call ferruginous.

Q. Than either lead or silver ore?

A. I think so.

Q. Why do you think so?

A. I have made iron determinations and have seen a great

557 — pieces.

Q. You are judging by looks?

A. Yes; what is termed iron ore; I am not judging altogether by looks; I say that I have made assays for iron.

Q. Did you make assays of ore in that mine for iron?

A. No. You are speaking of this mine and nothing else?

Q. I am speaking of the Stirling mine. How long have you studied and worked at assaying?

A. Since 1873.

Q. Are you a regular educated assayer or picked it up yourself?

A. I was taught by a competent assayer in the first place; afterwards I went to the State assay office.

Q. How long did you stay there?

A. About three months.

Q. Have you worked at it constantly ever since or just at intervals?

A. Not constantly; there were short intervals that I was not working.

Q. Did you ever compare your assays with any assays made by a competent assayer?

A. Yes; all over the country and San Francisco.

Q. It agreed pretty well?

A. Yes.

Q. If your assays should differ from Professor Thomas M. Price's, of San Francisco, who would be right, you or he?

A. Either is liable to be right, if the difference is slight. I
558 have made a great many assays against Thomas Price, of San Francisco, and they generally agreed very closely. I also, while studying at the State assay office, assayed some of their patrons' work which they signed their name to, which is pretty good evidence that they considered it correct.

Q. Do you know how ores of the character such as exist in the Stirling mine are usually found in deposits of the kind you have stated, namely, lime-rock formations?

A. How they are usually found?

Q. Yes.

A. Usually found by being followed up and explored.

Q. What do you mean by followed up?

A. If you have got a ledge on the surface you might follow it along where it looked most favorable.

Q. Does ore of that kind usually exist in well-defined ledges between good walls, or is it usually found in chambers, bunches, pockets, and kidneys, as they are termed in mining parlance?

A. I believe it is generally found in the latter way.

Q. In which way—bunches and kidneys?

A. Yes.

Q. When you started to sink down at this hole marked "7-foot hole," sunk seven feet at the point of location, how wide was the streak which you commenced to sink down on?

A. About eighteen inches.

Q. Then you started to sink on that thinking that it might be developed into an ore body beneath; is that your idea?

A. Yes.

559 Q. Then it is usual in mines of that kind and character to follow a streak, large or small, of that ore—follow it up—for the purpose of seeing whether or not it would not develop into a large body of ore or would give out?

A. That is owing a good deal to circumstances.

Q. That is done, is it not? They do it for that purpose.

A. That is done in cases. It is owing to circumstances.

Q. Are there not strata of ore in that mine to-day which, if followed up, might develop into a valuable body of ore?

(Objected to by counsel for complainant as irrelevant, immaterial, and wholly speculative, and calling for speculation.)

A. I do not know.

Q. Do not you know that there is a stratum of ore on the side or the roof of the thirty-eight-foot level in that mine extending down in a northeasterly direction?

A. I did not know that there was.

Q. Do not you know that there is a streak of ore in the ore chamber on the north side of the same extending up into the thirty-eight-foot level?

A. No, I do not.

Q. Do not you know there was such a streak or deposit of ore in that place when you quit working in that mine, and that you left it there, and did not take it out?

A. No, I do not know that there was; not to my recollection. There might have been a streak of iron. I term iron where iron predominates and there is no ore to speak of.

Q. You can answer the question to suit yourself. What is
560 your definition of ore?

A. It is a mineral-bearing substance more or less valuable—mineralized rock.

Q. I will ask you was there any ore left in that chamber at the time you quit work there? I use the word ore in its broadest sense.

A. There were a few small spots.

Q. At what places in the chamber?

A. I cannot designate every place where there was a little spot of ore.

Q. You ought to know, if any one does, where you left that ore. You said you worked it carefully to take it all out. If you left any ore there I desire to know specifically and positively at what points in that chamber you left that ore. If you do not know you can say "no," or can say that you do not know?

Mr. REDDY: I state to the witness that counsel has no right to direct him as to what answer he shall give to the question; that he shall answer the question in accordance with the fact as it stands in his mind and recollection. Counsel has not the right to tell him that he shall answer in a particular way.

A. I may have left some particles of ore—say from a fraction of an ounce to several pounds—on three sides.

Q. Did you go into the chamber after completing the work, or did you direct the men to stop working in that chamber when they had reached a certain stage in the work?

A. I both directed and went into it.

Q. Were they still working when you last went into that
561 chamber?

A. No.

Q. Did you go into the chamber after your men had entirely ceased working in it?

A. Yes.

Q. For what purpose?

A. On my way through the mine.

Q. You did not go into it, then, to examine it?

A. I examined it a number of times after the men had been taken out of there.

Q. After they quit working?

A. Yes.

Q. Did you examine the north edge of this little excavation—the little shaft four feet in depth that you testified to—in the southeast end of the corner?

A. Yes.

Q. Did you see any ore on the north edge of that little excavation?

A. That is out of the hole?

Q. On the edge of the hole, on the north side of the little excavation, on the bottom of the chamber?

A. No.

Q. Did you see the ore forming a portion of the north side of the excavation?

A. No.

Q. Did you examine it at that point?

A. I examined it everywhere.

Q. You could not see that ore?

A. No.

Q. Is there not a body of ore sticking up between a little excavation and the north side of the ore chamber over a foot in thick-
562 ness and two or three feet in length, until it reaches this side of the chamber?

Mr. REDDY: What do you mean by a "body of ore?" Will you be kind enough to state?

Mr. MINER: I do not care about explaining what I mean by a body of ore. Will you answer my former question? Is there not a body of ore sticking up between the little excavation and the north side of the ore chamber over a foot in thickness and two or three feet in length, until it reaches this side of the chamber?

A. No.

Q. Did you see any ore extending from this little excavation to the north side of the ore chamber?

A. No.

Q. None at all?

A. Now, I mentioned awhile ago there might be a fraction of an ounce to several pounds anywhere on those three walls.

Q. Do you state positively that between the north side of the little excavation, extending from there to the north side of the ore chamber, and on the floor of the ore chamber within that space, there is absolutely no ore of any kind or character?

A. With the exception of what I have stated above, I do.

Q. Just state what your exception is.

A. I just did; from perhaps a fraction of an ounce to several pounds; no body of ore.

Q. What is a body of ore?

A. A body?

Q. Yes.

A. A deposit of ore; mineralized rock.

Q. That is your definition of a body of ore?

563 A. That is my idea of it.

Q. Are bodies of ore any particular size?

A. No.
Q. Would you call several pounds a body of ore?
A. No.
Q. When would you cease to call it a body of ore?
A. Within reason.
Q. Give us your idea of what you would call, within reason, a body of ore.
A. If you had a chunk the size of this room I would call that a small body.
Q. It is hard for you to say when it ceases to become a body of ore. It is about as hard, in your mind, the same when a pig becomes a hog?

Mr. REDDY: We do not introduce the witness at all on questions of that kind.

A. I will say, from my experience, different men have different ideas on such things.
Q. I will ask you if there is not ore on the north side of the ore chamber of more than two feet in width, or thereabouts, extending up the entire distance of that chamber—up into the thirty-eight-foot level—and was there when you quit working that mine, and is there to-day?
A. I think not.
Q. Will you swear it was not there and is not there now?
A. I will swear, to the best of my knowledge, it was not there; I do not know how it is now.
Q. Who performed the last work in the ore chamber when you were running the Stirling mine?
A. I cannot assert that.
564 Q. Did you not say you discharged the men who were working in that chamber?
A. Yes; but I do not remember which particular men I had working there.
Q. Did those men engaged in working in the ore chamber work the ore according to their judgment or according to your judgment?
A. According to the judgment of all of us.
Q. You intended to work, then, until you had, in your judgment, exhausted the ore supply in that chamber?
A. Yes.
Q. And you worked until you concluded, in your own judgment, that you had exhausted that supply of ore.
A. Yes.

(A recess was here taken until 2 o'clock.)

565 *Afternoon Session.*

H. W. COFFIN recalled for further cross-examination.

Mr. MINER:

Q. Did Silva appear to be sick when he quit work at the Stirling mine at the time he was foreman?

A. Yes; he had a cold.

Q. You spoke about one side of the ore chamber not having ore in it at the time you started to work in it. Which side was that?

A. Did I say none at all, or but little?

Q. One side had but very little, you said. Describe from what points, in your judgment, did you take the ore which you estimated to be fifty or sixty tons, a portion of said ore having come from said chamber.

A. I took it from the east side, north side, and west side, principally.

Q. From what other points did you take the balance of this ore which you estimated as this much?

A. I took it from winze No. 2, all but a trifling amount, right adjacent to the winze and the ore chamber.

Q. Did you take it from that winze, commencing at the 38-foot level, down to the ore chamber?

A. I took some from there.

Q. Did you take any above the thirty-eight-foot level in the winze?

A. Yes, sir.

Q. How much, about?

A. I have told you I cannot designate the amount.

Q. Did you take the bulk of that ore from the ore cham-
566 ber or from the winze?

A. I got the bulk of that ore below the 38-foot level.

Q. In the ore chamber?

A. And here.

Q. Where did most of that which you took below the 38-foot level come from—the ore chamber itself or from the winze?

A. I think the ore chamber.

Q. Was there more taken out than was sold?

A. I think not.

Q. Do you know of some ore having been sold to Gorman, about thirty-six tons?

A. I can tell you what I know about it.

Q. You have heard of that fact?

A. Yes, sir.

Q. Was there any ore besides that thirty-six tons which you took out which was not sold, but which remained at the mine?

A. You had better let me explain. I was not there when the ore was taken away.

Q. Answer in your own way.

A. I do not know.

567 Q. Do you know when this ore was sold?
A. No, sir.
Q. What did you do with this ore which you took out of that mine?
A. I had it on the dump outside of the mine.
Q. Do you know whether there is any of it there now or not?
A. No, sir.
Q. Explain how you traced up these drill holes to see in what they ended—the drill holes in the ore chamber.
A. I found how they ended by digging down the ore.
Q. Did you dig down the ore in person?
A. No, sir.
Q. How do you know how the holes ended if you did not dig down the ore yourself?
A. I was there and saw some of it broken down, and saw the bottoms of several holes.
Q. Did you see any one dig down any ore in which there was a drill hole so as to expose the formation of the end of the drill hole?
A. Yes, sir.
Q. Did you see them actually engaged in that work?
A. Yes; in taking it down.
Q. Did you see a drill hole before they dug at it?
A. I did not see the drill hole until ore had been broken and the hole exposed.
Q. Then did you see them commence to dig that hole out and remove it entirely?
A. I do not know what you are getting at. I might come in there and see a drill hole in ore, and see that hole dug until you
568 could see the butt end of it where it stopped—not all of them, a couple of them.
Q. In how many did you see the butt end of the hole in the state that you mentioned?
A. I am positive of two. I think I saw more, but I am not positive.
Q. How deep were they when you saw them?
A. I cannot give exact depths.
Q. Anywhere near it?
A. I cannot give that.
Q. Were they shallow enough so that by placing a candle at the mouth of the hole you could see the rear end of the hole?
A. No, sir.
Q. How could you tell in what they ended?
A. By keeping on extracting ore or waste in whichever the hole happened to be.
Q. Were you present when the butts of those two drill holes were actually removed?
A. Yes, sir.
Q. Who removed them?
A. I cannot assert the parties' names I had in different places.

Q. Did you stand by and see them dig out those two butts of drill holes mentioned by you from the wall in which they were?

A. You were not talking about the ore chamber.

Q. That is all I was talking about.

A. You were talking about the winze.

569 Q. I have not mentioned the drill holes in the winze. You mentioned several drill holes in the chamber. I will now go over it again. Did you see any one of those seven drill holes which you have mentioned as being in that chamber actually removed from the walls or sides of that chamber?

A. I will not assert the exact place where I saw those two holes.

Q. Did not some one tell you that those two holes ended in lime?

A. They might have told me.

Q. Did you see for yourself and know of your own knowledge that any one of those seven drill holes testified to by you as having been in the ore chamber had been removed?

A. I will not assert positively whether it was in the ore chamber or not.

Q. Did you dig one of those holes out yourself in that ore chamber?

A. Not to my recollection. I might have assisted.

Q. Did you ever take a candle and hold it up to the mouth of either of the seven drill holes in that chamber so that you could see into the bottom of the holes?

A. I held it up so that I could see in and see the bottom if it was not too deep, but I never saw the bottom.

Q. You never saw the bottom of either one of the holes in that ore chamber?

A. By holding a candle up until the holes were dug down to the end of them. Do you understand what I mean?

570 Q. Exactly. Did you see any of the holes in the ore chamber after they were dug down so that you could see the bottom of them in the ore chamber?

A. I will not be positive as to the point where I saw them. I saw the bottoms of the holes.

Q. In some other part of the mine, perhaps?

A. I will not say exactly. It might have been in the ore chamber.

Q. Why do you say those drill holes in that chamber ended in lime without having seen the end of the holes?

A. I might have seen two of them, for that matter, that were dug out for one thing. In the next place, in some of those holes there was nothing but lime behind the ore, and I knew the end of it was very close, and I knew there was nothing but lime several feet in on endways, like looking round the corner.

Q. You stated that one hole was three feet in depth?

A. Yes, sir.

Q. Where was that—on one side, or what end of the ore chamber?

A. I think it was in the north end.

Q. Look at your model to be sure.

A. I think in the neighborhood of the northwest corner; right in

there. That would be right up in here. That is the long hole that ended in ore.

Q. That ended in ore, and it was in the ore chamber?

A. Yes, sir.

Q. Did that develop the extent of the ore?

A. It developed the fact that the ore extended that far.

Q. Was that hole dug out?

A. I will not assert positively.

571 Q. Why did you not dig it out if you knew there was three feet of ore certain? You had that demonstrated by the drill hole. Why did you not dig that out?

A. I do not know whether it was dug out or not. It might have been dug out; I do not remember. It was drilled lengthways of this bunch of ore. You could also see the side of the ore, parallel to which the drill hole was run.

Q. Which side?

A. You could see the east side was exposed, and the drill hole, I think, ran north; that was about it; I cannot tell exactly.

Q. Now, point out, if you can, on the map or designate by the points of the compass where there was any other hole in that chamber which was pointed out to you, which hole ended in ore, besides this hole in the northwest corner.

A. That ended in ore?

Q. Yes, sir.

A. I know of no such hole ending in ore.

Q. Did not that three-foot hole end in ore?

A. You except that.

Q. It was six other holes you saw in the ore chamber?

A. I said I thought I saw about seven in the ore chamber.

Q. One of which ended in ore?

A. Yes, sir.

Q. Now, will you swear that the other six did not end in ore, of your own knowledge?

572 A. I will not swear positively, but I am almost sure of it.

Q. Did you ever stand by and ask one of your men to dig out these holes so that you could see what there was back of them?

A. I think I did.

Q. I want to know for certain. Did you stand by and get your men to dig down this ore into which this ore started in the chamber for the purpose of determining what there was back of the holes?

A. I think I had a hole or two dug down that way, but I will not swear it was in the chamber. I saw the bottom of a couple of holes. I saw them dug out.

Q. Who dug them out?

A. I told you I could not recall the man's name.

Q. Did I ask you to designate where these holes were in the chamber?

A. You asked me several times.

Q. Could you do it?

A. No, sir; I could give you a general idea. I cannot designate each and every hole.

Q. What was the width of the chamber from north to south at the time you commenced working in it?

A. It was about nine feet.

Q. What was the width of the chamber at the time you quit working in it?

A. It was very little more.

Q. What was the width of the winze at the time you commenced working in it to extract the ore from it—that is, in winze No. 2?

A. At any particular point?

Q. The average width of it from the 38-foot level down to
573 the ore chamber; that was the point of the winze from which you took the ore?

A. I said from there and above.

Q. Above the 38-foot level?

A. Yes, sir.

Q. Above the 38-foot level how much of all the ore that you took out of that mine was there? Name some quantity.

A. I cannot.

Q. Besides the ore that you took out of the winze No. 2 and out of this ore chamber, how much ore beyond and outside of that did you take from other portions of the mine?

A. Not a ton—that is, exclusive of winze No. 2 and the ore chamber.

Q. Now, the ore from winze No. 2 you took, commencing from about the 38-foot level and extending down in the ore chamber?

A. Above and below the 38-foot level.

Q. How far above the 38-foot level?

A. Possibly as high as fifteen feet from the floor.

Q. Up winze No. 2?

A. Yes, sir.

Q. Now, commencing at the highest point at winze No. 2, from which you began to take this ore, extending from that down to the bottom of the ore chamber—that is, down to where the winze touched the bottom of the ore chamber—what was the average width of the winze or the size of it when you commenced to work it?

A. It averaged about four or five feet.

Q. Four by four or five by five?

A. The average both ways?

574 Q. Yes, sir.

A. That is a very hard matter; it is hollowed out considerably at the 38-foot level. I should judge the average of the whole thing would be five feet by four.

Q. When you commenced working?

A. In that neighborhood.

Q. What was its average size when you quit working?

A. I think it would average a foot or a foot and a half more each way.

Q. Was the ore extending in this winze from fifteen feet above the 38-foot level down to the ore chamber, when you commenced working on it, on all sides of the winze?

A. No; I think not.

Q. On which side was the ore?

A. I think there was a streak connecting that ore. The ore was not very regular. It ran a little from one side to the other. It was mostly through on the southerly side—the bulk of it.

Q. How long were you engaged in removing the ore from this winze and ore chamber?

A. I cannot state.

Q. Can you give me an idea?

A. I did not keep at that continually. I believe I changed the men round for other work occasionally, and I have no idea how long it took. Possibly it would have taken five or six days—that is, in taking it out. You are speaking of taking it out?

Q. Digging it down and taking it out. Did you blast any
575 of it in removing it?

A. Yes, sir.

Q. It was necessary, then, for you to drill in this ore for the purpose of blasting, was it not?

A. In spots; it was not absolutely necessary; we did it to save time; to loosen up the ground; we put in a very small charge, just to shake it up.

Q. Who first informed Mr. Yerington with regard to these drill holes?

A. I think I did.

Q. Did you not write to him about them?

A. I do not think any one else could inform him about them before I did.

Q. What did you write to him about them?

(Objected to by counsel for complainant on the ground that the letter is on file.)

Q. Did you tell Mr. Yerington for what purpose these seven holes that you mentioned in the ore chamber were drilled?

A. I think I intimated that my opinion was that they were drilled to sample the ledge and ascertain its thickness and dimensions.

Q. What do you mean by drilling to sample the ledge?

A. To get the assay value for one thing and how thick it was.

Q. Did you ever know drill holes to be drilled in a body of ore for the purpose of getting drills for sampling and assaying purposes?

A. Yes, sir.

Q. You have known that to be done?

A. Yes, sir.

Q. Did you ever do it yourself?

576 A. No; I never did it myself.

Q. Why is that done; does it give a good general assay of the ore?

A. It will, if it is driven on an average point of the ledge and across the ledge.

Q. These holes look to you, as a miner, as if they might be drilled for the purpose of sampling the ore?

A. Yes; sampling and determining how far the ore extended.

Q. Who called your attention to these holes; do you remember the man's name?

A. I do not remember the man's name who called my attention to them; I found one myself.

Q. Can you designate a single hole or more than one into which you put anything for the purpose of measuring the hole?

A. I cannot designate any particular one, but I think we put something into most every one.

Q. Are you positive that you did it; that you measured those holes yourself in person?

A. I measured some; I will not swear to every one.

Q. Can you name the holes that you measured yourself in person?

A. No, sir.

Q. Have you forgotten which holes you measured?

A. Yes, sir.

Q. Do you know who drilled those holes?

A. No, sir.

Q. Have you any idea when they were drilled?

A. No, sir.

577 Q. Was the bottom of that ore chamber flat or slanting when you first commenced working in it?

A. Slanting.

Q. Give us the way it slanted.

A. In an easterly direction.

Q. Was the eastern end of the bottom the lowest point in the chamber?

A. Yes, sir.

Q. And the floor at the western end was the highest?

A. Yes, sir.

Q. Was not there a ladder at the western end which was used to come down into the floor of the chamber?

A. Yes, sir.

Q. What was the length of that ladder?

A. I should judge about seven feet.

Q. Was not there ore immediately behind the ladder when you went to work in the ore chamber?

A. Yes, sir.

578 Q. Did you not remove that ore?

A. Yes.

Q. After removing the ore what did you have?

A. Waste.

Q. Was there any ore at all left at the point where you removed the ore behind the ladder?

A. No; there was a space left; that was where that pillar stood.

Q. A pillar of ore stood there?

A. Yes.

Q. Which way did the ore body pitch in that chamber—from the north, south, east, or west?

A. I do not think there was much pitch to it.

Q. What was it, then?

A. It was very nearly perpendicular.

Q. Then it would stand up and down from the bottom of the chamber, would it not, if it was perpendicular in the chamber; it must have pitched away from the bottom of the chamber or else gone down through the bottom one way or the other?

A. There was no ore on the top; the ore was on the sides of the chamber; there was no ore on the top.

Q. There was on the north side when you commenced working?

A. Yes.

Q. Did the whole of it cover the entire north side of that chamber?

A. I think it did.

Q. Did it not have a pitch or a dip to it?

A. As you stood and looked at it?

Q. Yes.

A. My impression is, not; it was nearly perpendicular.

579 Q. When you worked it away did you see any streak of ore or ore matter or vein matter left that had any pitch about it or dip to it at all?

A. It was so broken up that I do not think it would have a pitch any way—that is, after it was taken out.

Q. You estimated the ore that you took out of that mine at sixty or seventy tons?

A. I estimated it in that neighborhood.

Q. You think it might have been that yet, or do you?

A. No.

Q. Why do not you think so?

A. Because it has been weighed since.

Q. Has all you took out been weighed?

A. I suppose it has.

Q. You were informed that thirty-six tons of ore had been sold?

A. Yes.

Q. From what you judged, all that you took out had been weighed and sold?

A. Yes.

Q. Could you possibly make a mistake of a difference between thirty-six and seventy tons in guessing at the amount of ore taken out of the mine?

A. Yes; I might.

Q. You might have made that much of a mistake in guessing?

A. Yes.

Q. You might equally be mistaken about mining in other respects?

A. I might in some things.

580 Q. When did you commence working about a mine—at what age?

A. About '73 or '74. I was about fifteen years old. I do not remember my exact age.

Q. When did you visit the ore chamber after you made the connection with the upraise from the eighty-two-foot level?

A. Daily, I think.

Q. I mean the first visit you made to it after the connection was made.

A. I was right there at the time the connection was made.

Q. How long before that visit had you visited the chamber since you had been into it?

A. Possibly, I think I was there very shortly before sounding. I was in there quite often at that time, sounding from the upraise to the chamber.

Q. How many days does it take to prosecute the work in the lower level to make that connection?

A. I cannot remember exactly. It was possibly six weeks; about that time.

Q. During six weeks how often were you in that ore chamber?

A. I might have been there a hundred times.

Q. Will you swear that you were in there fifty times during those six weeks?

A. Yes.

Q. Why were you going in there so often?

A. Trying to catch from the sound where the upraise was coming out and looking around.

Q. Did you take any notice of what you saw in the chamber during those visits?

581 A. Do you mean to make memoranda or write it down?

Q. In your mind?

A. Yes.

Q. Did you notice any waste on the floor at that time?

A. Waste and ore both.

Q. And ore too.

A. Yes.

Q. And you did not hunt for any drill holes?

A. No.

Q. You did not see any drill holes at that time?

A. No.

Q. You did not make any yourself?

A. No.

Q. Might it not have been possible for some one to have drilled those holes in the ore chamber that you have testified to during the six weeks you were running the lower drift without your knowledge; could that not have been done?

A. I do not think so.

Q. It could not have been done without your knowing it?

A. I do not think it could.

Q. Were you in the mine all the time—every day?

A. I was in the mine several times every day then. I had men in there who would have heard it.

Q. What shifts did you work—eight-hour shifts? Did you work your men eight hours a day?

A. Ten.

Q. Did you have two shifts of ten hours each?

A. For a few days only.

Q. Which few days; the first part or the last part?

A. I cannot say.

Q. Then there was a portion of the time of fourteen hours that no one was in that mine out of the twenty-four; was not
582 that the case?

A. There might have been days that such was the case. They were exceptional.

Q. As a rule, you worked ten hours a day during the twenty-four in those six weeks; was not that so?

A. Yes.

Q. What time did you commence those ten hours to work; what time in the day?

A. Seven o'clock in the morning.

Q. And you would work until when?

A. Until six o'clock, with an hour's intermission.

Q. From six o'clock at night until 7 o'clock the next morning the mine was absolutely deserted; was not that so?

A. Not all the time.

Q. Why not?

A. For a short time I had a night shift, and for some time after I went there I was in the mine myself every night until 10 or 11 o'clock making a plot of the drifts.

Q. Can you designate how many days you worked that night shift?

A. I cannot.

Q. Did you work the night shift a week during the six weeks?

A. I cannot say; my recollection is very indistinct about that.

Q. How long would it take an average miner to drill these holes that you have seen in that mine; all these ten or a dozen holes that you have testified to? How long would it have taken a miner
583 to drill them in the depths they were or supposed to have been?

A. To drill the whole thing?

Q. To drill all those ten or eleven holes that you saw—how long would it take the average miner to do it?

A. I should say two days.

Q. Two days to drill ten holes?

A. I said there were over twelve.

Q. Holes averaging from twelve inches to three feet?

A. From eighteen inches to three feet.

Q. It would take an able-bodied miner two days to drill those holes?

A. Or a little less, perhaps.

Q. You do not know anything about drilling; did you ever drill any?

A. A little.

Q. How many holes did you drill?

A. I do not know that I ever drilled an entire hole. I have drilled portions. You must remember some of those holes were drilled in very hard ore, and in other places they were drilled where a man could not strike a drill. There were holes drilled where a man would not have six inches in which to strike his drill.

Q. Name a place where a man would not have room to drill his hole in; name one place.

A. Where it is marked "ore streak in yellow" on the map.

Q. Is that the only hole where he might not have any room to strike?

A. That would be about the closest place.

Q. How much room did he have there to strike?

584 A. It is owing to the length of his drill. He could not have over a few inches with a very short drill.

Q. A man did not need over a three-foot drill to drill any of those drills; he could start it with a foot drill?

A. Yes.

Q. He could have used a two-foot drill?

A. Yes.

Q. And had plenty of room all the time?

A. Yes; on that three-foot drill.

Q. All the drill necessary that he would have to have would be a drill not to exceed three foot two inches in length?

A. For convenience, I should think he would have it longer.

Q. How much longer? You do not know anything about drills?

A. I should say he would want one about three to six inches long.

Q. Did you examine an upraise on the easterly branch of the main tunnel just above winze No. 1?

A. Yes.

Q. Did you notice that stope?

A. Yes.

Q. Was there any ore in there?

A. There might have been a trifling amount.

Q. Is not the stope over six feet wide, six feet one way and two feet another, and runs clear up ten or twelve or sixteen feet?

A. I think it is; there are several stopes there.

Q. Is not the entire hanging wall of that stope covered with rich, good ore?

A. I do not think so.

Q. Did you get up in there to examine it?

A. Yes.

Q. It is your opinion, then, that the ore body is of no account?

585 A. How large a quantity did you ask about? I think not.

Q. Is not the ore over a foot in thickness on the hanging wall of that stope?

A. Do you mean continuous?

Q. In any place on it and all over it?

A. No; I think not.

Q. Is it not a foot thick anywhere?

A. I do not think it is a foot thick anywhere—rich, good ore; that is what you said.

Q. Is it a foot thick of any kind of ore?

A. It might be a foot thick of iron ore.

Q. Then you think the bulk of that ore left in that mine is simply iron ore; that is your opinion?
A. Yes.
Q. Did you ever work in iron ore?
A. No.
Q. Why do you judge that is iron ore?
A. From the looks of it, and having assayed similar ore.
Q. Did you assay that ore for iron?
A. I told you no a dozen times.
Q. Are you not judging that is iron ore because it looks a little reddish?
A. That is one reason.
Q. Are not some carbonate ores reddish?
A. I have seen a red carbonate ore.
Q. And rich ore?
A. I have seen rich carbonate ore.
Q. You have seen rich ore coming out of that mine that was red in color, have you not?
586 A. Not exactly red. I never saw any rich ore coming out of that mine.
Q. Never did?
A. No.
Q. None of the ore you took out was rich?
A. That is, any ore I took out in mining.
Q. Yes; none of it rich?
A. No.
Q. The highest assays you took out of the mine from the time you first started in until the present was what?
A. I do not remember.
Q. Have you any idea of the highest assay that you got?
A. I am not clear on that.
Q. You spoke about a tunnel at the point of location over a place at which a tunnel had been sunk extending beyond that and turning to the left. Was not the ore beyond that excavation marked "hole seven feet?"
A. I do not think there was. I think there was a streak of iron there.
Q. All that you think indicates ore in that mine at present is simply iron? You call all the streaks and strata that you see iron?
A. The greater part.
Q. The greater part is iron?
A. Yes.
Q. Will you swear that is iron absolutely?
A. I will swear I think so.
Q. We can take your opinion.
A. I will swear it is not ore, at any rate.
Q. Is not iron rock ore?
A. Ore such as we were mining for?
587 Q. This mine is the first mine of that character that you ever mined for that kind of ore in?
A. Yes.

Q. I believe you said your map was wrong. Who made the map that was wrong?

A. I believe I spoke something about that.

Q. Explain.

A. I was just given the wrong direction to run in.

Q. Who gave you the direction?

A. The map, for one thing.

Q. Whose map?

A. My map that was given to me.

Q. Did not Silva suggest the idea to continue that drift on the 82-foot level from points "D & E" on the map to the ore body?

A. Yes; and he was mistaken, too.

Q. In the course?

A. Altogether.

Q. Was he not urging you to run for that ore body on that level to come up under the ore body?

A. He was, but he did not know where it was.

Q. He was trying to get to it.

Mr. REDDY: Tell what he did.

Mr. MINER: Who started Silva to work there; did you or did Silva start himself?

A. Both he and I had orders to run south.

Q. To run south?

A. Yes.

Q. Who gave you the orders?

A. I think Mr. Yerington gave them to me, and they were
588 laid off on the map.

Q. Whose map?

A. I do not know what you mean.

Q. What map?

A. The map that was given to me.

Q. Who gave it to you?

A. Mr. Yerington.

Q. He gave you a map and told you to run south?

A. Yes.

Q. I suppose you obeyed orders?

A. I did until I got the line run; then I changed it on my own account and advised him of it.

Q. In running this short drift from "D E" to get under the ore body it would frequently keep you in the mine until 10 or 11 o'clock at night finding which way you wanted to go?

A. I said for awhile when I first went there I made a plat of the mine. I went down there after dark so as not to interfere with the men who were at work; during the day the men were wheeling there and hoisting there and I could not work.

Q. May you not have run entirely around the ore body instead of showing that there was no ore body in the mine?

A. The ore body shown in the chamber.

Q. If there is an ore body between the 55-foot level and the point "D E" in a northeasterly direction, you may have run round that ore body in running that drift?

A. No; that one gave out.

Q. Tell me what there is between the letter "D" on this map and running in a southwesterly direction towards the red spot marked "hole from thirty-eight-foot level." Will you tell me what there is in that mine?

A. Marked what?

589 Q. Do you see this letter "D" on this map?

A. Yes, sir.

Q. Take that for a starter.

A. Yes, sir.

Q. Running southwesterly to the red hole marked "hole from 38-foot level," commencing at a point 30 to 40 feet below the surface of the ground and running there, do you know what there is in that ground?

A. No. I suppose it is waste.

Q. Why did you not run this drift from the points "D" and "E" southeast instead of south? Would you not have had a better chance of striking the ore body which appeared to be on the north side of the ore chamber?

A. I did not run southwest, because the direction in which to run was given me.

Q. By whom?

A. By the map of Mr. Yerington.

Q. Then you were not using your judgment as a miner in developing that mine, but were using the judgment of Mr. Yerington, were you not?

A. It was my judgment at that time.

Q. Because he gave you the orders to do it—was not that it?

A. No; because I thought it was going right under the ore chamber.

Q. You were deceived in that matter as well as Mr. Yerington?

A. I was.

Q. You found out afterwards you were wrong?

A. Yes. I was in the wrong direction.

590 Q. Do you know where that ore body is?

A. Which ore body?

Q. The ore body on the north side of the ore chamber, going down.

A. There is no ore body there going down.

Q. There is no ore in the north side of that chamber pitching in a northeasterly direction. Do you assert that now positively?

A. No ore body pitching in a northeasterly direction.

Q. Is there a streak of ore there of any size or dimension?

A. I think not.

Redirect examination:

Mr. REDDY:

Q. You say you worked your men ten hours a day in the mine?

A. I think that was the length of time.

Q. Whereabouts did you all cabin, with reference to the mouth of the tunnel?

A. There were two, I think, who slept at the point marked either "A" or "B." The balance of the men slept down adjoining the boarding-house, and I slept in the office.

Q. If there had been any drilling done there in the night would it have been heard on the outside of the mine?

A. I think not.

Q. Do you know that you had any men who, after working ten hours, would get up in the night and go in there to drill holes for a matter of play or any other purpose?

591 (Counsel for respondent objects to the opinion of the witness being asked on a matter on which the court could draw its own conclusion.)

A. No, sir.

Q. Was there anybody else residing in the vicinity that you know of?

A. Not for several miles.

Q. How many?

A. About three.

Q. I believe you have already stated that you never ordered any such holes to be drilled?

A. Yes, sir.

Q. You say Frank Silva was sick when he left there—that is to say, he had a cold?

A. Yes, sir.

Q. How did he leave the mine—on foot or how?

A. I cannot assert whether he rode down on a team that came up there or took a mule that we had for packing purposes.

Q. He did not walk away?

A. I would not assert positively that he did not walk away.

Q. He simply said he had a bad cold?

A. Yes, sir.

Q. And that is all you know about his being sick?

A. That is all.

Q. All you know about his being sick was what he himself told you?

A. I never would have known myself if he had not told me.

Q. You are asked by counsel concerning the ore—if it was not all mixed up in one mess. I will ask you now if it is not the
592 fact that there is an independent streak and bunches of what is termed iron rock there—that is to say, streaks and bunches which do not carry lead to any extent?

A. Yes; there are.

Q. About what percentage of lead would be found in what you term iron ore? I understood you to say some a little trace and some a little more. Cannot you tell the difference between iron ore and lead ore by handling it, as to the weight?

(Objected to by counsel for respondent as leading, immaterial, incompetent, and irrelevant.)

Q. I ask you if you know or not?
A. To a certain extent.
Q. Whenever there is sufficient lead in the ore there to pay to make what you would term ore cannot you distinguish it from iron by the weight and appearance?

(Objected to by counsel for respondent as leading and as irrelevant, immaterial, and incompetent.)

A. I think I could.
Q. I understood you to say that you assayed those ores?
A. Yes, sir.
Q. Do you know whether this iron ore carries a percentage of lead or silver sufficient to give it any value?
A. Yes, sir.
Q. Do the iron ores of that mine carry sufficient lead or silver to give them any valve?
A. No—nothing; it was not my experience.

593 Q. What do you call ore in a practical mining sense and as the term is used among miners and among mining men in working such mines or any mines you are familiar with?

A. It is a mineralized substance that will pay expenses of extraction from the mine, handling and reduction in that district, whatever it may be.
Q. What might be called ore in one district might not be called ore in another district—that is, that would be determined by the cost of extraction and cost of reduction?

(Objected to by counsel for respondent as leading.)

A. Yes, sir.
Q. The matter which you take out of a mine is classified how?
A. Ore and waste.
Q. Those substances which are found within veins or mines which will not pay the cost of extraction and reduction is called what?
A. Waste.
Q. What is the iron ore; how would you designate it or classify it—ore or waste?
A. Waste.
Q. You have found in the different mines you have worked in a great deal of vein matter which would carry some of the precious metals or the metal being mined for and yet it would be thrown away the same as ordinary country rock and regarded as waste?

(Objected to as leading, immaterial, and irrelevant and incompetent, and it does not appear that there was any such class of ore in the Stirling mine. The witness simply answers yes to a long statement made by counsel.)

A. Yes, sir.

594 Q. You were asked by counsel if it was usual to follow up small streaks of ore in mining with a view of finding large bodies. I will ask you if following small streaks always leads to large bodies?

A. Not by any means.

Q. Where there is one successful effort of that kind how many failures have you known, just in a general way?

A. I should say perhaps fifty.

Q. Fifty to one?

A. Yes, sir.

Q. Because you find a small streak of ore, then, does it follow that you are by work to discover at the end of that streak a large body of ore?

A. No, sir.

Q. Or that the streak is in any way connected with a large body of ore?

A. No, sir.

Q. If that was the case mining would be a sure thing—you would only have to find the streak and you would be sure to get the ore body?

A. Undoubtedly.

Q. Speaking about the course run from winze No. 1 on the 82-foot level you say that Silva wanted you to run in a course different from the one you did run and that he was also wrong?

A. He suggested what we all wished to do.

Q. What course did he suggest to you to run in?

A. Just as I run. He thought that was correct. He had started there himself and made the turn to run south. The face of the drift was toward the south when I began work.

Q. If you had continued in that direction you never would have reached the ore chamber?

595 A. No; I would have been further off than I was after having changed it.

(Signed) H. W. COFFIN.

596 GEORGE BRYSON, a witness for the complainant, sworn.

Mr. REDDY:

Q. State your age, occupation, and residence.

A. I am 63 on the 16th of August.

Q. Where do you reside?

A. Carson City.

Q. What is your occupation?

A. Miner.

Q. In whose employ are you now, if you are employed?

A. I am at the present time working in the car-shops.

Q. The car-shops of the Virginia and Truckee railroad?

A. Yes.

Q. Mr. Yerington is the superintendent of that company, is he?

A. Yes.

Q. Do you know a mine called the Stirling mine, in Inyo county, in the New Coso mining district?

A. Yes.

Q. State if you ever worked on that mine.

A. Yes.

Q. When did you commence work?
A. The 4th of July, 1884.
Q. Did you work there in the year 1885?
A. Yes.
Q. State whether you worked there from the 1st of January until the 5th of April, 1885.
A. Yes; from the first of January I was at work.
Q. Did any one else work with you in January, 1885?
A. Yes.
Q. Who was it?
A. Henry Horn and Barney Price.

Q. What was the current rate of wages there for ordinary
597 miners?

A. Three dollars and a half, I believe, was about the average pay; some had four dollars.
Q. How many days did Barney Price and Henry Horn work on the mine in January, 1885?
A. Four days.
Q. Four days each?
A. Each four days.
Q. How many days did you work on the Stirling mine from the 1st day of January, 1885, until the 5th of April, 1885?
A. I worked a little nearly every day.
Q. How many full days' work did you put in on the mine?
A. I do not know that I ever put in more than 8 hours at one time.
Q. Averaging all the hours that you worked, how — days' work would you say you had performed?
A. I must have worked about four months.
Q. How many days' work altogether from the 1st of January, 1885, until the 5th of April, 1885?
A. I should think, to the best of my knowledge and belief, I must have worked about 40 odd days—full days' work.

Cross-examination:

By Mr. MINER:

Q. What kind of work did you do on that mine from January to April, 1885?

A. Prospecting. I would go through the drifts prospecting
598 from the top, from up above, and down in all those little prospect holes; worked a day or two in a place that I thought would do good from my own prospecting ideas.

Q. Were you put there on that time to work in it or simply as a watchman?

(Objected to by counsel for complainant as irrelevant and immaterial.)

A. I was sent there to take charge of the mine.
Q. As a watchman?
A. No, not as a watchman.

Q. Were you sent out there to take charge of the mine as a watchman?

A. No; I was sent out to the mine to work, and got my written orders to work. The prospecting I did I did more, in a manner speaking, to satisfy myself, because I was not supposed to work ten or twelve hours a day. I generally worked six or seven—and sometimes five—hours. I do not know that I ever worked ten hours, only when we had the other men.

Q. Did you work any in what is called the ore chamber, on the fifty-five-foot level in the mine?

A. Yes, where we had the men working four days at one time.

Q. What did you do there?

A. I was at the windlass some of the time.

Q. What work did you do in the ore chamber?

A. I was up on the windlass.

Q. What kind of work was done in the chamber?

A. I cannot tell you what kind of work was done. I was on the windlass.

Q. Did you go down into the chamber at all?

A. Yes.

599 Q. Did you see men working in it?

A. Yes.

Q. What were they doing?

A. Price was filling the tub.

Q. With what?

A. Rock.

Q. What kind of rock.

A. Good country rock—waste.

Q. Did you haul up any ore out of that chamber during those three months?

A. No. I never saw what I called a piece of ore, to my knowledge, come out of it.

Q. You were not working in ore?

A. We were hoisting what I call waste rock.

Q. What was that composed of?

A. What we call country rock.

Q. What kind of country rock?

A. It was good rock. I cannot tell you what it was composed of. It is lying there at the mouth of the drift.

Q. Was there any vein matter in it; was there any ore of any kind in it?

A. No; I never saw a pound of ore about the place.

Q. There is not a pound of ore in the mine?

A. I am talking about that place.

600 Q. Will you say there is not a pound of ore in that chamber?

A. I say I never seen a pound of ore in it.

Q. In that ore chamber?

A. Yes; what was supposed to be the ore chamber; there may be ore there, but I never see it.

Q. Do you know what ore is when you see it?

A. I have seen a good many car-loads that were lying on the dump that they called ore.

Q. When you were there, between January and April, how many tons, about, was there in it?

(Objected to by counsel for complainant as not being cross-examination.)

A. From January that we were talking about, when I done the work there, there was no ore sacked.

Q. I am talking about 1885.

A. They were all gone before that.

Q. How long did you work on the windlass hauling up stuff out of that ore chamber?

A. Four days.

Q. Who dug the dirt out of the chamber, Mr. Price?

A. Yes. I filled some for the first day, but we could not get along; it was too heavy. I went into Darwin and got a man; it took two to the windlass, and Mr. Price stopped below.

Q. What was the size of the buckets you were hauling up with?

A. I guess it was about half a barrel.

Q. And of the waste rock, was it too heavy to haul it up with?

601 A. Yes, sir.

Q. Was it too heavy because there was lead ore amongst that waste?

A. I assure you I never saw a piece of ore like what was in the sacks.

Q. Did you see any ore of any kind down there besides that?

A. I did, but not in that chamber.

Q. Did you see any lead ore in that chamber at all?

A. I did not; I did not see anything in that chamber that I would call a bit of ore, that I would pick down.

Q. What did it look like?

A. What I said; country rock.

Q. Did you see any black ore in that galena?

A. No, sir.

Q. What work did you do outside of those four days, from the 1st of January to the 5th of April?

A. I want you to distinctly understand that, to the best of my knowledge and belief, *that* from the 1st of January, including those four days that I had those two men about and around the mine, that I must have worked very nearly forty good days.

Q. With pick and shovel?

A. With pick and shovel; I had pick and shovel from the word go; sometimes I would not carry a shovel with me; I might leave it in the hole up there, and I would pick a hole awhile, and I did not like it, and would take a notion to go to some other place.

Q. What did you do with the stuff you dug out?

602 A. It is lying there.

Q. Can you name any point where there is any waste dirt lying in that mine that you dug out?

A. Yes, sir.

Q. Name the place.

A. Just show me the map and I will show you.

Q. Here is the map.

A. I will show you lots of places. Here it is, a sort of incline (pointing to tunnel "B"). There is a connection from here.

Q. From the westerly branch of the main tunnel?

A. There is the main tunnel. There is a westerly branch go this way, I forget how many feet, and then there is an upraise which connects with this place here.

Q. Might not that connection be with this tunnel "C," coming down right over the winze, where there is a winze?

A. This is a different branch altogether; there are two cross-cuts—one east and one west.

Q. It is this western branch that connects with the tunnel B?

A. I do not know anything about the tunnel B; I know there is an incline down that connects down there.

Q. From the western branch?

A. I went up to it and I could see; I have been all through it.

Q. Let me tell you that you are mistaken in this evidence.

A. There is no mistake about that.

Q. May not you have been mistaken, and is it not this point that is marked "tunnel C" on the map which connects through an upraise with the easterly branch of the tunnel?

603 A. No, sir.

Q. You are positive of that?

A. I am positive of that.

Q. You are as positive of that as you are of anything else?

A. Distinctly understand me, the main tunnel goes in there to the westward; here is the branch that leads off there. I have been to the end of all of them; I have been up the raise here (marked "B"), and I have been in other parts.

Q. How long have you been employed by Mr. Yerington?

A. About three months after I came back.

Q. Have you not for years been in the employ of some of Mr. Yerington's companies or of Mr. Yerington?

A. I have been in the employ of the company; Mr. Yerington did not hire me.

Q. You have been employed in the companies that Mr. Yerington manages for a number of years?

A. No, sir.

Q. How long have you been employed?

A. The first work that I did for Mr. Yerington for seventeen years was to go out to that mine.

Q. You used to work with him seventeen years ago?

A. When he first started here I worked for him.

Q. You have worked for him ever since?

A. No; I never did until I went out to this mine.

604 Q. Now you are working for the railroad company?

A. Yes, sir.

(Signed) GEORGE BRYSON.

(Here a recess is taken until to-morrow, Saturday, June 12, at ten o'clock a. m.)

605 SATURDAY, *June* 12, 1886.

(Counsel and parties met pursuant to adjournment.)

W. V. PRICE, a witness on behalf of complainant, sworn.

Mr. REDDY:

Q. What is your name?
A. William V. Price.
Q. What is your age?
A. I am fifty-five years old; I will be the 18th of this month.
Q. Where do you reside?
A. I reside in Virginia.
Q. What is your occupation?
A. Mining.
Q. How long have you been engaged in mining?
A. I have been engaged in mining ever since I have been on this coast, about thirty-five or thirty-six years.
Q. State whether you ever mined any before you came to the Pacific coast.
A. I mined some back in the States.
Q. Where?
A. In Virginia, in the coal mines; also in Illinois, Jo Daviess county.
Q. What character of mines were you engaged in in Illinois?
A. Lead deposits.
Q. What class of mines have you been engaged in on the Pacific coast?
A. I worked eight years in California gold mines; the rest of the time I have been here on the Comstock, Belmont, and Can-
606 dalaria and other places. This winter I have been mining in Churchill county. I had charge of a little mine out there belonging to Mr. Hoyt, called the Hoyt mine.
Q. What mine did you work in in Candalaria?
A. The Northern Belle.
Q. What position did you occupy there?
A. I was four years foreman of that mine, and the latter two years superintendent.
Q. You worked there six years altogether?
A. Yes, sir.
Q. Four as foreman and two as superintendent?
A. Yes, sir.
Q. When did you quit work there?
A. After we lost the lawsuit.
Q. After the Northern Belle had been deprived of the possession by law?
A. Yes, sir.
Q. Do you know a mine in the New Coso mining district, Inyo county, California, called the Stirling mine?

A. Yes, sir; I was there something over two months.
Q. State when you first went there.
A. I went there on the second day of May, 1884.
Q. Who employed you to go there?
A. Mr. H. M. Yerington.
Q. In what capacity did you go there?
A. As foreman of the mine.
Q. Who was the superintendent while you were there?
A. Mr. Coffin.
Q. All the time?
A. All the time I was there.

Q. When did Mr. Coffin cease to be superintendent?

607 A. He ceased the same time that I did. After the case was tried in Independence he went back to the mine and settled up the little matters.
Q. You went there and worked a second time, as well?
A. Yes, sir.
Q. How long after the first working?
A. I believe I got there on Christmas day, or the next day after that.
Q. Christmas day, 1884?
A. Yes, sir.
Q. How long did you remain there on that occasion?
A. I was seventeen days making the trip from here and back. The number of days I was at the mine I cannot state.
Q. We want to get some idea of it. It would not take you over three days each way?
A. No, sir.
Q. Then tell us how many days you were at the mine at work.
A. I believe I was there eight or nine days.
Q. You were seventeen days making the trip?
A. Yes; I stopped at Belleville. Mr. Yerington settled with me for seventeen days' work.
Q. When you first visited the mine, on the second day of May, 1884, state whether you examined the mine or any particular portion of it before setting to work?
A. Yes; I went all through the mine. I went through with Mr. Yerington.

608 Q. I will ask you if you visited the place marked on the map as the point of location?
A. Yes, sir.
Q. Will you describe the work at that point when you went there? Describe the point marked "point of location" and its condition when you went there.
A. There appeared to be a cut run in until they struck this strata or vein.
Q. Vein of what?
A. Vein of ore.
Q. What kind of ore?
A. There was a little lead ore on both sides of it—galena ore.
Q. Go on and describe it.

A. The cut had been used, I think, for a blacksmith shop or a cabin. There was a roof over it. They put some posts across on the top of the cut, and on the left-hand side, after they passed through the stratum of ore that was there, they ran in further on the left-hand side of the cut some six or eight feet. That is all the work that was done there.

Q. I will ask you whether the ore on the sides of the open cut appeared to extend below or whether they did extend below the floor of the cut?

A. It was all dug out.

Q. I ask you if it appeared, before any work was done, to you that the ore extended below the floor of this cross-cut?

A. I thought it did.

Q. Could you not tell by looking whether it ran down as low as the floor?

609 A. No one could tell, until the floor was cleaned out, whether it went down or not.

Q. I asked you if the ore vein exposed in that cut extended down as far as the floor as it then stood.

A. Yes; on both sides.

Q. And could you, in the condition of the work at the time when you looked at it, tell that it did not extend below?

A. No; I could not tell.

Q. State whether it appeared to extend below the level of the floor.

A. Certainly; it came right down onto the floor.

Q. State whether you afterwards did anything at that point.

A. Yes, sir.

Q. What work did you do?

A. I started in to sink right there, at that point where the ledge should have been. I went down between six and seven feet.

Q. Through what sort of material did you sink?

A. Rubbish and waste dirt and stuff that had been thrown in; down towards the bottom there were a good many old chips.

Q. Had the ground been opened before?

A. Certainly.

Q. When you first went there, before doing any work, were there any indications there of the ground having been worked before?

A. There was nothing more than what would be through on this work.

610 Q. Was there any indication there that there had been a shaft sunk down, following that up?

A. No; not at all.

Q. What was the condition of the bottom of that hole there where it had been opened before, as far as it had been opened before? State whether the stratum of ore extended below that point or not.

A. It did not go down eighteen inches. You could see where it had come down and shut off. They kept on sinking below that.

Q. State whether this stratum pinched out or not.

A. Yes; it pinched out; it appeared to exhaust itself.

Q. Now, did you visit a place in the mine marked on the map "ore chamber" in yellow?

A. Yes, sir.
Q. Did you do any work in that ore chamber?
A. The last time?
Q. No; the first time is all I am talking about now. What was the condition of the ore chamber when you first visited it?
A. There was considerable waste dirt in it that had been thrown up out of this place; the floor was out of this little shaft.
Q. Had there been a connection made between the 82-foot level and the point marked on the map "hole" before you got there?
A. Yes, sir.
Q. State whether the floor of that ore chamber was en-
611 tirely covered or not with debris when you went there.
A. Yes; it was.
Q. Was it afterwards cleared away?
A. I cleared it away the last trip.
Q. I will ask you if there was any ore on the side of that chamber when you got there?
A. Isolated spots here and there that would be naturally left; that would not pay to take out; that probably were not worth taking out. Mr. Coffin always told me they were not worth taking out.
Q. To what was the ore attached that you saw hanging on the sides?
A. Limestone; white lime.
Q. What was the north side of that chamber composed of when you visited it?
A. It was white lime.
Q. What was the south side?
A. That was also white lime.
Q. What was the easterly end composed of?
A. The same material.
Q. Lime?
A. Yes, sir.
Q. What was the westerly side composed of?
A. The same material.
Q. State whether or not there was any ore on those sides except what you have designated as blotches.
A. None at all.
Q. Simply blotches of ore clinging to the lime walls?
A. Yes, sir.
Q. Did you find any drill holes on the sides?
612 A. Yes; I found a few.
Q. How did you find them?
A. They were shown to me by Mr. Coffin in the first place.
Q. What were they in?
A. In the limestone, all that I see. I saw none in the ore. They looked to me as if they had been drilled through the ore into the limestone.
Q. How much of the hole remained in the lime?
A. I never found any there. There are holes there that are deeper, but I never measured any; six or eight or ten inches.
Q. Into the lime?

A. Yes, sir.

Q. I understood you to say that this lime rock was white lime?

A. Yes, sir.

Q. If those holes had been blasted, as we term it, would it have blackened the lime?

A. I think not. Giant powder does not blacken.

Q. Would it or not show any signs of its having been blasted?

A. There would be no evidence of a hole being drilled there had it been blasted.

Q. It would have been all blown away?

A. It would have chambered right out.

Q. Did you do any work in any other parts of the mine?

A. I did some down at the foot of the 82-foot level.

Q. At the foot of the winze No. 2?

613 A. No. 1, I believe you call it. I did a little in the drift down there.

Q. What were you doing there?

A. I went down and started the drift; there was a little evidence of ore there; I told Mr. Coffin I would go and see if we could not get a little down there.

Q. What did you find there?

A. I did not find anything.

Q. Did you find a drill hole?

A. Yes; the deepest one I seen in the mine was fifteen or sixteen inches.

Q. What was it drilled in?

A. It started in ore, or rather in quartz.

Q. What did it end in?

A. It ended in lime. Here, we will say, was the quartz. The ore was started right in there, as it was. I drilled through this quartz into the limestone and not blasted at all. The face of it had been taken off and the hole not blasted. I never seen it, and I worked in there one whole shift without finding it.

(Counsel for respondent objects to the evidence and moves to strike it out on the ground that it does not comply with the issues. No holes are mentioned in the pleadings except the ore in the ore chamber; that the evidence is irrelevant, immaterial, and incompetent, and that the respondent has not been connected in any way with the drill holes.)

614 Q. You say the hole was filled. How was it filled?

A. It appeared to be filled up with loose dirt.

Q. State whether any of it was tamped in.

A. I think not.

Q. Did you do any other work in any other portion of the mine?

A. Yes, sir.

Q. Say on the 82-foot level?

A. We made a connection with this shaft that we afterwards sunk.

Q. Which shaft?

A. Winze No. 2; commenced right in here and cleaned this out.
Q. Where did you commence to sink—on the 55-foot level?
A. Yes, sir.
Q. And sunk it down to the 82-foot level?
A. Then run a drift from that and connected with the 82-foot level, and then started the winze and sunk that down 34 feet on the 82-foot level.
Q. Did you encounter any ore?
A. No, sir.
Q. What did you encounter; what kind of rock?
A. Limestone.
Q. Did you do any work in winze No. 2, between the 55-foot level and the mouth of the winze, in ore or otherwise?
A. No; nothing in ore.
Q. Did you examine the rock in the raise between the 82-foot level and what is termed the ore chamber?
A. Yes, sir.
Q. In what kind of rock was that upraise made?
A. White lime.
615 Q. Did you examine what is marked on the map in the ore chamber as "hole" and what appears as a little shaft or hole in the easterly end of the ore chamber as it appears in the model?
A. Yes.
Q. In what kind of ground was that?
A. That was in white lime.
Q. In what kind of rock was the floor of that ore chamber composed?
A. That was white lime.
Q. Did you do any work above the tunnel level—from the tunnel level up towards the surface?
A. Yes. I had one man there two days working at it.
Q. Did you examine all of the works above the tunnel level?
A. All I could get into.
Q. Did you find any ore there?
A. Yes; there was some ore there.
Q. How much?
A. I thought we might get forty tons of ore around that place. That is what I estimated that at at the time. I still think a man might scrape up forty tons of ore there.
Q. Is there any iron or rock in that mine?
A. Yes. There is iron rock in all lead mines.
Q. Associated with the lead ore?
A. Yes; to more or less extent.
Q. Sometimes the lead ore and iron are mixed together?
A. Yes—blended.
Q. Is there much iron rock in that mine—a large quantity?
A. There is not an excess of it.
Q. Is that iron rock regarded as ore—is it taken for ore?
616 When *iron* you are mining for a lead mine is it treated as gangue and waste, or is it not?

A. It is used a great deal as a flux.
Q. Flux is not ore. Waste is not ore. I ask you is it ore?
A. No; it is not ore.
Q. Are you well acquainted with the tools in use at the Stirling mine when you were there at the first visit?
A. Yes. I did all the sharpening. I worked at the blacksmith shop and did all the work to save the cost of the blacksmith.
Q. Then you knew all the tools that were there in use?
A. Yes.
Q. I will ask you if when you went there there was a drill about six feet long there?

(Objected to by counsel for respondent on the ground that the question is leading and immaterial.)

Q. State whether there was or not a drill in the kit of tools six feet long?

(Counsel for respondent objects to the question as leading.)

A. Yes.
Q. When you first went there?
A. Yes.
Q. Was there more than one?
A. Only one drill of that character.
Q. I will ask you if you found a hole anywhere in or about the ore chamber three feet or thereabouts in depth?

(Objected to by counsel for respondent on the ground that
617 the question is leading.)

A. I can only answer that as to hearsay.
Q. I do not ask you for hearsay.
A. I never measured that hole.
Q. At the time you quit work in the ore chamber what would you estimate the ore in sight to be—how many tons at the time you quit work the first time?
A. I estimated it forty tons.
Q. In the ore chamber?
A. I did not estimate it at anything.
Q. What was your judgment as to the number of tons hanging there?
A. A man might get four or five tons if he would go around and scrape it up carefully; if he spread a canvas he might catch four or five tons.
Q. You say you returned to that mine to do some work there on the 25th of December, 1884?
A. Yes.
Q. Who sent you there?
A. Mr. Yerrington.
Q. Did he tell you what he wanted you to do there?
A. Yes.
Q. What did he tell you to do?

(Objected to by counsel for respondent on the ground that it is immaterial, irrelevant, and incompetent and hearsay; also statements made outside of the presence of the defendant, and not bearing upon the issues in this case.)

618 A. He wanted me to clean out that ore chamber and also work in on the southeast corner of the ore chamber to ascertain the fact whether there was any more going in in that way. I went down, and after cleaning out this ore chamber and ascertaining that the bottom was in lime I then worked a couple of days on this southeast corner. There was still evidence of ore there, and I dug that ore out and put in a couple of shots, too.

(Counsel for respondent moves to strike out the answer on the ground that it is not responsive to the question. In addition to stating what he was told by Mr. Yerington to do he goes on to state what he did. The evidence is also immaterial and incompetent.)

Q. State in full the orders you had from Mr. Yerington about working in that mine.

(Counsel for respondent objects to the question on the ground that it is a conversation had outside of the presence of the defendant in this action, is hearsay evidence, and is immaterial, irrelevant, and incompetent.)

A. That was the purport of the instructions. I did the work that he told me to do when I went there.

Q. Did you clean all of the dirt out of the ore chamber—all of the waste and loose rock?

A. Yes.

Q. So that it made the floor of the chamber perfectly clean?

A. Perfectly clean—scraped off.

Q. What was that bottom composed of?

A. White lime.

Q. You examined it carefully, did you?

A. I did.

619 Q. Solid rock in place?

A. Yes; that is what it was.

Q. What remained in the southeast corner after you put in those shots and did the work you described?

A. White lime. I drew the drill right back behind me as I cleaned it out.

Q. Having cleaned the chamber out, and having a full view of it, what do you say the sides were?

A. The north side had a few little indications of ore.

Q. In what shape?

A. Little splotches—stains.

Q. Simply adhering to the white lime?

(Objected to by counsel for respondent as leading.)

A. Yes; there were splotches of ore and stains of ore.

Q. State whether there was any indication of the vein or stratum of ore going into either wall.

A. I see none.

Q. Had there been such there would you have seen it from the examination which you made?

A. I most assuredly would.

Q. You were looking at it for that purpose?

A. I was very anxious to get some ore.

Q. You were ordered to get ore if you could?

A. Yes.

Q. That is what you were working for?

A. Yes; and any man managing a mine or running a mine is more anxious about that than anything else. He will go to extravagant means to get ore if he can.

Q. Was there any stratum or were there strata of ore going
620 from the bottom or floor of the ore chamber?

A. No; I see none.

Q. From the work done on the eighty-two-foot level from winze No. 1, together with winze No. 1, the upraise into the ore chamber, and winze No. 2, as a miner, would you say that that ground had been fully prospected for ore, or not, down to the eighty-two-foot level?

A. Fully prospected?

Q. Yes.

A. Yes; from the work done there, from the small compass of ground, there would be no room.

Q. When did you leave that mine finally; when did you cease work there—about what time?

A. I was there eight days on the mine; I got there on the 25th of December.

Q. You did not work on the 25th of December?

A. No; I was going out there on the 25th. Mr. Anthony took me out on the 25th day of the month.

Q. You worked there along for eight days?

A. I found there was more than Mr. Bryson could do to hoist the dirt up. I sent into town and got another man.

Q. You worked the chamber clean?

A. I did not.

Q. What did you leave there?

A. I threw this stuff out in the corner.

Q. How much would that amount to?

A. It would not amount to two or three car-loads.

Q. How much of the bottom of the ore chamber did it cover?
621 A. I cannot say. I just threw it up out of this place.

Q. Did you throw any of it down to the eighty-two-foot level?

A. No; when I put off two shots some of it went down to the eighty-two-foot level.

Q. Could the floor of the chamber be seen at various points notwithstanding the waste that you left there?

A. Yes, I think we could.

Q. You left Mr. Bryson at the mine?

A. I left Mr. Bryson at the mine.

Q. Did you have any one else working with you any portion of the time that you were there?

A. Only one man on the windlass with Mr. Bryson.

Q. Did you leave him at the mine, or did he go with you on to Darwin?

A. He stayed right at the mine.

Q. You left him there with Mr. Bryson?

A. No; he went in the day before I did.

Q. I am asking you if you left two men at the mine or one?

A. One; Mr. Bryson.

Q. Did you get any ore at all at the place marked on the map "point of location?"

A. Yes; I dug a little ore out of the side.

Q. How much?

A. Probably twenty-five or thirty pounds; not over that.

Q. In what form does the ore appear in the works above the Stirling tunnel?

A. In the form of galena more than anything else.

622 Q. How did the galena occur, in little pockets or in a stratified form?

A. There are some pockets.

Q. Little punches?

A. Yes; and stratified carbonites.

Q. In streaks?

A. Yes; interspersed with galena.

Q. Could you distinguish between the iron rock in that mine and the galena and carbonites?

A. Any changes?

Q. For instance, here is a streak or a bunch of carbonite ore, and at another point or at the same place you find a streak of galena, and between ore on either side of the streaks you find iron rock.

A. I do not think there is any regularity to it.

Q. Now, whether regular or irregular, could you, as a miner, go into that mine and separate the iron rock from the carbonite and galena?

A. Yes.

Q. A miner in taking down ore would have no difficulty at all in sorting out the three classes of rock?

A. Not at all.

Q. How do you distinguish the carbonite from the iron, by weight or color, or how?

A. Some by weight and color more than anything else.

Q. In mining it becomes necessary for miners to learn to distinguish between iron rock or gang in the mine and the ores?

(Objected to by counsel for the respondent as leading.)

A. Yes.

623 Q. If a man was incapable and did not know how to do that he would not be fit to put in a stope?

(Objected to by counsel for respondent as immaterial and irrelevant.)

A. He would have to pay a great deal of attention to it.
Q. A man that does not know how?
A. He would not be fit to be put in.
Q. It would not do to take a superintendent to watch one man?
A. No.
Q. State whether it is not ordinary work for miners to classify the rock which they have to mine and take down.

(Objected to by counsel for respondent as leading, immaterial, and irrelevant. It does not appear that the parties who worked in this mine were capable of distinguishing or did distinguish between the class of ores that was in that mine.)

A. Yes.
Q. State whether a man incapable of so classifying and separating rock would be regarded as a first-class miner or a miner fit to work in a stope or on ore until he knows that.

(Same objection by counsel for respondent.)

A. I would not call him a first-class miner.
Q. Where does that iron rock that you have been speaking of generally occur; in the works above the tunnel level?
A. There is more of it there than there was below. In all lead mines you will find that.
Q. In lead mines is the iron rock regarded as ore?
A. No, sir.
624 Q. The iron rock that is found in lead mines generally is treated as a sort of gang, is it not?

(Objected to by counsel for respondent as leading.)

—. ——.

Q. State how it is regarded.
A. It is in the gang; it leads to the ore and from the ore.
Q. State whether it is associated with the ore bodies and with the ores at times.
A. Very frequently; it is generally the blossom of all lead mines. You will find it on top and it is a good thing to follow.
Q. I will ask you if you did any work at the points marked "A & B" on the map?
A. I worked at the point marked "A." I was superintending the work; looking after it.
Q. What condition of things did you find there?
A. I found some ore.
Q. In what shape?
A. In pockets and deposits that remained—that had been mined out there before, and those little places were left.
Q. Were they filled in so as to be obscured from view without work?
A. No; you could see this place where I worked; that is what took me there.
Q. When you went there was the fact that it had been undermined concealed?

A. Yes; it had been undermined and it was standing open.

Q. Proceed and explain the situation there.

625 A. I found in driving off to the east as you went into this place quite a bunch of ore. I thought it would certainly be a good lot, four or six or ten or twelve tons there. I went in, but I found inside of this opening, being the only place that that ore had been mined from, they came down from the top of it, cut it all up, and filled it in with waste.

(Counsel for respondent moves to strike out the answer on the ground that it is irrelevant, immaterial, and incompetent; that it is not confined to the issues in the case; that no mention has been made in the pleadings of any work having been concealed at that point, nor does it appear that the said work if concealed was known at the time this action was brought; nor does it appear that the said work, if concealed, influenced the Southern Development Company in any way in the purchase of this mine.)

Q. How much ore did you get at the point where, when you started in, you supposed you would get a body?

A. A thousand pounds will cover it all.

626 Cross-examination by Mr. MINER:

Q. Did you ever work in ores of the same character as the ores in the Stirling mines?

A. Yes.

Q. Where?

A. At Tybo, Nye county.

Q. For how long?

A. I was there over a year.

Q. In what capacity?

A. As a miner, an ordinary miner—so close to it that I got leaded and had to quit.

Q. You worked, you state, about eight or nine days in this Stirling mine at your last visit there?

A. Yes; as near as I remember.

Q. How many hours per day?

A. The object was to work ten hours.

Q. Did you work ten hours?

A. I cannot say that; we had no watch or anything of the kind; we had to go a good deal by guess-work; there was no clock there running; I came near doing it as I could.

Q. Now, we will commence at the first point that you worked. Where was that?

A. The first point I worked there at the last visit was cleaning out this ore chamber.

Q. How long were you engaged in cleaning it out?

A. The first two days we got along very slow at it; I had no one but the old gentleman, Mr. Bryson, on the windlass, and I could not send up more than half a tub at a time; we sent to town and

627 got this other man there, and I believe we worked four or five days after that cleaning it out.

Q. How did that debris that you removed from the ore chamber get into the ore chamber, if you know?

A. When I went there on my first trip to the mine there was some ore in the ore chamber. When we started this winze down to go to the eighty-two-foot level I spoke to Mr. Coffin and said, "We might just as well fill this up," and I threw it in or had it thrown in to save hoisting this dirt.

Q. You threw the stuff taken from the winze down winze No. 2?

A. Yes; as long as we could shovel it up we threw it back.

Q. You threw it into the ore chamber?

A. Yes.

Q. How far down was winze No. 2 when you first commenced working on the Stirling mine?

A. Winze No. 2, it was about at the bottom of the ore chamber.

Q. What was the bottom of winze No. 2 at that time composed of?

A. What time?

Q. Was there any ore in it at all?

A. Not directly in the bottom of the winze.

Q. Was there any ore going down on the sides of it to the bottom of it?

A. Not a bit.

Q. None at all?

A. No.

Q. Was that opened to view when you first went to the mine so that you could see to the bottom of it?

A. Yes.

628 Q. Then you could see that the bottom was composed of lime?

A. Yes; and it went off to the ore chamber like this.

Q. Was there not some ore in the sides of the winze, near its bottom?

A. I see none; if there had been, it was taken out. Mr. Coffin had taken all the ore out in every place he could get any.

Q. What was the next work done after cleaning out the ore chamber?

A. At the southeast corner of the ore chamber.

Q. That was where you blasted the two holes?

A. There is where I blasted two holes (pointing on the map).

Q. Did you blast any ore out of that?

A. No, sir.

Q. You are sure there was no ore in that?

A. I took my pick and worked off everything that looked like ore in this place before I put my shots in.

Q. What did you do with the ore that you took from that southeast corner?

A. I threw it into the ore chamber—on the floor of the ore chamber.

Q. Was there not, at the time you removed the ore, ore extending from the north side of the little hole, in the southeast corner of the chamber, over to the north side of the ore chamber and pitching in

a north and a northeasterly direction and extending up to the roof of the 33-foot level on the east side of the roof?

629 A. No; that ore was all taken out there by Mr. Coffin before I got to the mine at all.

Q. You did not see any ore in those places at all?

A. No; only those stains that I speak of.

Q. What is the size of them?

A. The size of your hand or your back; splotches of ore that was attached to the mine; throws on that would not pay to take out; that is left there.

Q. Were there many of them?

A. No; there were not many of them anywhere down in that mine.

Q. Do you know how far into the wall they extended?

A. One place in particular I know where I found that other drill hole drilled right into one of them; it went in two or three inches.

Q. That is the only place you know how deep in the wall those stains, as you term them, extended?

A. I know they are not extended, because I dug down there and took my pick.

Q. There was a spot of fine-looking ore on the side of the chamber which you did not dig?

A. I did not think it worth while. Mr. Coffin knew and they could see the drill hole.

Q. Why, when you saw the hole on the side of that chamber, did you not dig it entirely down, so that you would know it did not extend any further than an inch or two? You were looking for ore.

A. What would be the purpose of digging down a splotch

630 of ore as big as your head or your hand if you knew that you had to take out more waste than you did ore and could not separate it?

Q. Did you examine the 38-foot level in the eastern roof of it?

A. I looked all through there.

Q. Did you see any ore there?

A. Here and there spots and just spots; very small spots; nothing that I would take out.

Q. What kind of ore?

A. Lead ore; carbonate ore; just such looking ore as I wanted to find for Mr. Yerington, if I could.

Q. You say there was an open cut run in at the point of location?

A. Yes, sir.

Q. Did not that open cut afterwards develop into a short tunnel?

A. Yes; it ran off in this shape.

Q. And ran off to the left six or seven feet in that drift, and beyond the hole sunk seven feet in the ground was there any ore?

A. No ore. It went into blue lime; hard blue limestone.

Q. What was the size of the ore streak at that place marked "hole sunk seven feet?"

A. I should think the ore, taking it iron and all, what I call vein matter, was a foot wide.

Q. Do you know who drilled those holes that were pointed out to you by Mr. Coffin?

A. I do not.

631 Q. How many did he point out to you in the ore chamber?

A. I think there were seven or eight that he pointed out.

Q. In the ore chamber?

A. In the winze and ore chamber.

Q. And what was the depths of the holes?

A. I never measured any; it was over eight or ten inches.

Q. You were just guessing at it?

A. No; I measured some that were eight or ten inches deep.

Q. Could you see the bottom of them?

A. No; I could not see the bottom.

Q. Then you do not know what the bottom was in?

A. I know they were in lime because they started in lime; where I commenced to measure them they were lime; they probably had been started in ore and ran into the lime.

Q. The ore in that mine is rather of a dry character, is it not?

A. Yes, sir.

Q. It slacks down and runs down?

A. Some is, and some is pretty hard.

Q. Which is the hard ore and which is the soft ore; there is a dark-colored galena ore—lead ore; you have spoken of three classes of ore. Galena?

A. Galena is generally hard.

Q. Carbonate?

A. Carbonate is the soft.

632 Q. The iron ore?

A. Hard.

Q. Is not this iron ore often and always used in connection with the lead ore in the mine as flux?

A. Not always.

Q. Generally?

A. Generally we put in some of the iron ore—a limited amount of it—as flux.

Q. What do you mean by flux?

A. To assist in smelting the lead ore.

Q. You always have to use some flux—more or less—to assist in smelting lead ore of the kind found in the Stirling mine?

Mr. REDDY: We have not introduced this witness as an expert about fluxing ores.

A. That is my impression; I do not know anything about furnace work.

By Mr. MINER:

Q. Yo do not know anything about smelting ores?

A. No; I do not know anything about smelting ores.

Q. You stated that this ore was the blossom of lead ore. What do you mean by that?

A. If you are out on the mountains hunting a lead mine or any kind of silver mine and you find a ledge or vein of iron it is called prospecting for lead.

Q. It is a good indication to find that iron ore in a lead mine?

A. First rate.

Q. Then you say in this ore chamber the iron ore and the carbonate and the galena were sometimes blended together in one mine?

A. Yes, sir.

633 Q. Was not that the case through the entire Stirling mine?

A. No, sir.

Q. Name a place where you could see the two ores separate and distinct.

A. All over the mine you could see the galena ores entirely isolated from everything else—pure, solid galena.

Q. Would not there always be, nearly, a stringer or streak or stain of this iron ore leading to it or running from it?

A. Not always.

Q. You spoke about a six-foot drill; who did that drill belong to?

A. I do not know; I claimed it as my property while it was there.

Q. Where did you first see it?

A. Mr. Coffin showed it to me.

Q. Where was it?

A. Sitting up against the blacksmith shop.

Q. Who put it there?

A. He said he got it down the hillside.

Q. Had it been used?

A. Yes, sir.

Q. What became of that drill?

A. I could only say from my impression; that is all. I do not know what became of it; it disappeared from there very mysteriously.

Q. While you were working at the mine?

A. Yes; I went to get it one day to cut it in two, to make

634 two drills of it, and I could not find it where I left —; suppose that some one stole it that night or the night before, because I missed it just in one day.

Q. What was the length of that drill, if you know positively?

A. I could not say positive; between five and six feet, or near six feet.

Q. Was it standing up when you saw it?

A. Yes; up against the blacksmith shop.

Q. And you judged it to be within five and six feet long?

A. Yes, sir.

Q. It might have been less?

A. It could not have been less than five, and I do not think over six.

Q. You think in that ore chamber, at your last visit, you could have obtained four or five tons of ore out of it by digging it here and there and putting down a piece of canvas?

A. I would hate to swear that there could be got one ton of merchantable ore.

Q. You estimate that you could get five or six tons?
A. I do not estimate that; I say there might have been.
Q. How did you get that idea, that there might be four or five tons—from what you saw there?
A. No; not from what I saw. From what I saw I would not take it out for it; I could not see into the ground at all.
Q. You saw indications of ore—you saw some ore in the sides of the chamber?
A. Yes, sir.
635 Q. You judged you might obtain four or five tons out of that chamber?

Mr. REDDY: He did not say anything of that kind.

A. I said not over four or five tons.

Mr. MINER:

Q. Upon what do you base that estimate?
A. What estimate?
Q. Of four or five tons.
A. It is no estimate of mine.
Q. What is it?
A. It is just a guess; that is all.
Q. Upon what do you base the guess?
A. Men form their opinions from experience. I have seen places where there was but little ore in sight, and on going to work got considerable, and, on the other hand, you might not get any.
Q. You speak of there being no ore there. What do you mean by being no ore—no rock-bearing mineral—in that mine?
A. No, sir.
Q. What do you call ore?
A. Anything that will pay for working.
Q. Is there any ore in that mine that will not pay?
A. Yes, sir.
Q. How many tons, about?
A. That is a question that I will not try to answer.
Q. Have you any idea?
A. No; I have no idea about that.
Q. How many tons are there in the ore chamber that will not pay to extract?
636 A. You will have to get some one to answer that question besides me.
Q. Have you any idea at all?
A. No idea.
Q. You saw some ore there?
A. Yes, sir.
Q. You say it was not worth taking out?
A. No, sir.
Q. Because it would not pay?
A. Because it would not pay.
Q. How much of that kind of ore did you see in that chamber?
A. One hatful, I will say.

Q. You say there was only one hatful in that ore chamber?
A. No, sir.
Q. What do you mean by one hatful of ore?
A. About as much as that hat of yours would hold.
Q. Do you mean to say there was not more than a hatful of ore in that ore chamber?
A. No; I do not. You are pressing me for an answer that I cannot give.
Q. The reason you did not take the ore out of the ore chamber, any more of it, was because, in your judgment, that ore would not pay to extract?
A. That is right.
Q. How do you know it would not pay?
A. I gave you the reason a little while ago; that in taking down those small spots of ore you would have to get so much of this white lime—loose, soft stuff—that you could not assort it, after breaking it down, to make it pay.
Q. Are you in the employ of Mr. Yerington at the present time?
A. No, sir.
Q. Are you in the employ of the Southern Development
637 Company of Nevada?
A. No, sir.
Q. Who paid your expenses here?
A. I do not know that.
Q. Have you made any arrangements for it?
A. Not any.
Q. Do you expect Mr. Yerington to pay them or the Southern Development Company?
A. I expect to have my expenses paid by somebody.
Q. By whom?
A. By Mr. Reddy. He is the man I am looking to.
Q. Not to Mr. Reddy personally?
A. I do not know where he gets his money or anything about it. I expect him to.
Q. Where do you live now?
A. I have been living for the past six months in Churchill county.
Q. What have you been doing there?
A. Mining.
Q. Who got you that position?
A. I got it myself.
Q. Did Mr. Yerington or the Southern Development Company get you that position?
A. No; I started to go to Butte City, Montana, and got this position on the road there. I left here in good faith to go to Butte City, Montana.
Q. You went to the Stirling mine at the last visit to see if you could get sufficient money out of the mine to pay the work?
A. I wanted to ascertain the fact whether there was ore in this southeast corner.

Q. That is what you went for?
A. Yes, sir.
Q. What did you go to find that out for—to testify in this case?
A. I do not know. I was ordered to go there.
Q. Mr. Yerington ordered you to go?
A. Yes; he has always paid me very well for any work I did for him. He asked me as a favor if I would go down there, and I did.
Q. Did he not tell you he wanted you to testify in the case of The Southern Development Company *vs.* Silva?
A. No; he did not.
638 Q. Did not you know there was a case pending and you were wanted as a witness?
A. I knew there was a case pending. I have got a family, and I am willing to do anything honorable and upright to support my family, and I went there.
Q. Did not you know that your evidence in that respect was to be used in this case?
A. I did not.
Q. What notice did you have to come up? Were you subpœnaed?
A. I met Mr. Reddy down at Reno, and he said, "I want you."
Q. How did you come to go to Reno?
A. I was going to my family. My family live in Virginia City.
Q. Did you know this case was coming off here?
A. No.
Q. Had you kept Mr. Yerington posted as to your whereabouts?
A. No; the first intimation I had when I came home was Mrs. Price told me there had been a man there inquiring for me. I left particular orders with Mrs. Price to let no one know where I was.
Q. Did you not meet me in Carson a year ago last August?
A. Yes.
Q. And asked me when this case was coming up?

Mr. REDDY: If you make yourself a witness to contradict this witness I give you notice that you cannot argue the case.

Mr. MINER:

Q. Did you not say that you did not want to be kept around the country doing nothing, and if you were going to be a witness
639 in the case you wanted to know when it was coming off?
A. I believe we had some conversation.
Q. Have you not expected all the time to be a witness?
A. No; I did not expect to be in the country to be a witness. I left strict orders with my wife to let no one know where I was. I did not wish to be bothered with this case at all.
Q. How did Mr. Yerington know where you were?
A. I do not know whether he knew where I was or not.
Q. You came as soon as you were told you were wanted?
A. I met Mr. Reddy at Reno. I got a letter from my wife saying that my youngest child was sick.
Q. Did you stop or go home?

A. I went home. I never stopped a moment.

Q. You came back here as a voluntary witness; you came here to accommodate Mr. Yerington?

A. Yes; I met him at the Mound House and he told me he wanted me to come here.

(Signed) W. V. PRICE.

(A recess was here taken until two o'clock.)

640 JOHN S. GORMAN, a witness called on behalf of plaintiff, sworn.

Mr. REDDY:

Q. What is your name, age, occupation, and residence?

A. My name is John S. Gorman; my age is thirty-nine; residence, Inyo county, Independence; occupation, smelter and miner.

Q. How long have you been engaged in mining?

A. Since the fall of 1867.

Q. In what character of mines have you been engaged during that time?

A. Mostly lead mines; lead and silver.

Q. Where have you worked in lead mines?

A. In Eureka, Nevada, and Utah, Arizona, and California.

Q. Have you worked any in Inyo county, in California?

A. Yes, sir.

Q. In what mining districts?

A. In the Coso mining district, Darwin.

Q. Are you familiar with many of the mines of that district?

A. Yes; I have seen nearly all of them, and worked ores in nearly all of them.

Q. State whether you have examined many of the mines in the Coso mining district with the view of familiarizing yourself with the nature of the deposits and their characteristics.

A. I have been interested in working them and examining them for that purpose, to become familiar with them.

641 Q. What length of time have you been engaged in smelting and handling lead ores?

A. Since 1869.

Q. State whether or not you are an assayer.

A. I am an assayer.

Q. How long is it since you have learned the business of assaying?

A. In 1870 and 1871.

Q. Have you been in practice since that time?

A. Yes, sir.

Q. Do you know a mine in the New Coso mining district known and called the Stirling mine?

A. Yes, sir.

Q. When did you first become acquainted with that property?

A. I visited that mine in August or September, 1876, I think; I am not very positive; I did either in 1876 or 1877.

Q. Did you examine the surface?

A. I went out there with that purpose, at that time, to examine the surface.

Q. Do you remember about the time of the purchase of that property by the Southern Development Company of Nevada?

A. I do.

Q. How do you remember; by what acts and facts?

A. By hearsay, more than anything else, at that time; by seeing men go there to see it; all hearsay.

Q. Have you visited that mine since the reputed purchase by the Southern Development Company of the Stirling mine?

642 A. Yes; I have been there twice since; I went into the mine only once, though.

Q. When was that?

A. That was about ten months ago, the last time I was there.

Q. Did you go alone?

A. I did not; Mr. McKenzie was with me.

Q. What is the name of the person who went with you?

A. J. A. McKenzie.

Q. Why did you visit that mine on that occasion?

A. I heard that the mine was abandoned, and I was about to make a run in the Defiance furnace; I had considerable dry ore; I heard there was considerable ore there that could be got and went there with a view to examining the mine to see if I could get some ore from it.

Q. How did you enter the mine?

A. We went in the tunnel; we did not go below the tunnel level; we did not think it worth while, from what I heard about it; I supposed there was some ore above the tunnel level.

Q. State what examination you made of the mine and what parts of the mine you examined.

A. We went on the surface and went down as far as we could; we went below, then.

Q. Below where?

A. As far as we could go; there was a small opening made where it had been worked out; we examined it pretty carefully to see

643 if we could take out some ore; saw a great many drifts run and quite a number of excavations made where it had been worked before.

Q. State whether you examined it fully for the purpose of determining whether you could obtain any considerable quantity of lead ore or other ores from the opening.

A. That was the only purpose that took us there, and we examined it to the best of our ability for that.

Q. What ore did you find there, if any?

A. A small strata of ore on one side.

Q. State if you determined what quantity there was in sight in that mine above the tunnel level.

A. After we made the examination we consulted a while and concluded there was not five tons in sight, and it would not pay us or justify us to make preparations to take it out. While we might get five tons, we were not sure of it; still, there might be more.

Q. I will ask you if you ever have had any experience in examining mines with the view of determining quantities in sight?

A. I have had considerable experience in examining mines with the view of determining the quantity.

Q. And determining the quantity that could be obtained from any given locality in a mine?

A. Yes, sir.

Q. What took Mr. McKenzie there, if you know?

A. He was a partner of mine, and we went for our mutual benefit.

Q. Do you know Mr. Frank Silva?

A. Yes, sir.

644 Q. How long have you known him?

A. I have known him over eleven years.

Q. I will ask you if you ever sold what we call, in mining parlance, a long steel, or whether you ever exchanged drill with him?

Mr. MINER: I object to the question on the ground that it is incompetent, immaterial, and irrelevant; that the evidence sought to be introduced will not prove any issue in this case, and unless the witness can show some connection that this drill or steel had with this case the same is immaterial.

Mr. REDDY: We intend to show the relevancy by this and other witnesses.

A. I have.

Q. State when and give us the particulars of the transaction.

A. I want to place the time.

Q. State when it was and the particulars of the transaction.

A. I think it was in April, 1883.

Q. Now, go on and state what took place.

A. Frank Silva came to me and asked me if I had any long steel. I told him I had. He said he wanted to get a bar to make a long drill. I told him to come to the cellar where the steel was kept and select a bar. He done so. We took this bar down to the New Coso store and weighed it. He said he would return short steel
645 in its place. I saw him going with that bar to the blacksmith shop. Afterwards I was in the store, and he pointed to the bar standing up in the corner and he said, "There is the 'Billy Farrell.'" A short time after—I think it was three weeks or more—he brought me some short drills.

Q. You may state whether you had any conversation with him at that time.

A. I did; a little. I do not remember the particulars. I remember a few things.

Q. State the whole of the conversation, if you can recollect it.

A. He said a drill of that length came in handy prospecting. I had some conversation with him, probably, about a spoon long enough to take the dirt away from such a drill.

Q. State that also about the spoon.

A. I am not positive what his answer was. I think he said that he would weld two of them together to make it long enough. About three or four weeks afterwards he came to me with three bars of steel.

We weighed them on the same scales and I think there were three or four more pounds than the bar I gave him. I said to him, "I will make those kinds of trades every day." That is all.

Q. About what was the length of those drills that he brought to you?

A. Two and a half feet, I think, was the longest; from that down; I did not measure.

Q. About what sized steel?

646 A. I think three-quarters; I did not measure it.

Q. What was the length of the drill you let him have?

A. I think it was about six feet.

Q. In length?

A. Yes. It may be more; it may be a little less.

Q. What sized steel?

A. We called it five-eighths. It came there through a mistake. We ordered one hundred pounds below and they sent us a smaller-sized steel. We ordered a hundred pounds of three-quarters and I think they sent us a hundred pounds of five-eighths.

Q. You think that occurred in the month of April, 1883.

A. Yes, sir; it was just before Nixon arrived, and I think he gave up his position in the mint in April.

Q. You are sure it occurred before the sale by Silva to the Southern Development Company?

A. Yes; he was working the mine then.

Q. He was in possession of the mine at that time?

A. He was in possession of the mine at that time.

Q. Did you visit the mine during that year, 1883?

A. I visited the mine and bought some ore from him.

Q. Who was working there at that time?

A. Frank Silva.

Q. No one else there?

A. Yes; two other men—Manuel Fegero and Joseph Hilario. This was before I sold him the drill that I visited the mine. I traded the drill.

647 Q. Do you know whether any one was working with him at that time in the mine?

A. These two men were.

Q. At the time you sold him the drill?

A. I do not know.

Q. You do not know by any statement from him?

A. No; I think he was there alone.

Q. Now, we will go back to the quantity of ore in the mine for a moment. See if I understand you rightly. I understand that you examined the mine from the main tunnel—all the works above.

A. Yes, sir.

Q. And at the end of the tunnel you examined along the main tunnel?

A. We examined along the main tunnel.

Q. And from there up?

A. Yes, sir.

Q. In all the opened works?

A. Yes, sir.

Q. You came to the conclusion that you could not get five tons of ore?

A. We came to the conclusion there were not five tons in sight.

Q. Of course you could not see beyond?

A. No; this was after the mine had been abandoned that we went there with the view of getting this ore.

Q. This was long after the sale by Silva to the Southern Development Company?

A. This was about ten months ago; it was after Mr. Yerington and Mr. Mills were down in that country, which was July, and
648 it was a month or two after that; it might have been the last of July or the first of August.

Q. When you made this examination?

A. Yes, sir.

Q. About ten months ago?

A. Yes, sir.

Q. What do you mean by the words "ore in sight?"

A. I mean ore exposed to view as you pass along and examine it with a candle.

Q. You have to figure somewhat, do you not?

A. Yes, sir.

Q. It involves a calculation?

A. Yes, sir.

Q. Based on the ore that is cut in the openings and exposed?

A. The ore exposed to view.

Q. State whether that phrase is of common use among miners in the New Coso mining district.

A. That is the general expression given.

Q. Among miners?

A. Yes, sir.

Q. It is a phrase in common use among the miners?

A. Yes, sir.

Q. Have you heard it in use in other mining districts in Utah, Eureka, and other countries in which you have examined mines?

A. Yes; I have; a large or small body "in sight."

Q. It is well understood what it means among miners?

A. Yes, sir.

Cross-examination by Mr. MINER:

Q. Have you any interest in this case one way or the other?

A. Not a quarter of a dollar either way.

649 Q. Were you subpœnaed to come here?

A. No; I was not.

Q. Who paid your expenses here?

A. The railroad company sent me a pass and I paid my own expenses.

Q. Why do you pay your own expenses if you have no interest in the matter?

A. I have paid them so far. I think the company will pay my expenses, what I am out in the matter.

Q. You have worked mines down there in this New Coso district?

A. Yes, sir.

Q. What mines have you worked in the New Coso mining district?

A. I have worked the Defiance, the Driver, the Custer, the Independence, the Christmas Gift, and several others.

Q. Were all the mines you worked in that district of a similar character to the Stirling?

A. Nearly so; there is a little difference in the color of the ore and the value of it.

Q. What kind of ore do these mines contain, or have they contained, or do they contain now?

A. They are classified as galena and carbonates, with some oxides.

Q. What is galena ore?

A. I never analyzed it; I cannot say what the properties of it are. It carries a large percentage of lead, as high as seventy-five and eighty per cent.

650 Q. What else does it carry besides lead?

A. Some sulphur; I do not know the exact properties.

Q. It is silver ore?

A. Yes; sometimes it carries silver and sometimes it does not.

Q. What do you mean by carbonates?

A. I mean an ore that carries from fifty to sixty per cent. of lead in a carbonate state.

Q. What do you mean by a "carbonate state?"

A. It is a soft ore, tolerably free of sulphur.

Q. What would you state was the difference between galena ore and carbonate ore? You have made two classes, as I understand.

A. The difference is very easily determined by the looks of it.

Q. You mean that they would look differently to the eye. That is not the difference I mean. What is the difference between them?

A. One is free of sulphur and the other contains considerable. That is one difference.

Q. Give other differences, if you know any.

A. I never analyzed it and could not say.

Q. What is the difference in the looks of the two ores?

A. A difference in the colors; there are all kinds of colors—white and gray and black. Galena is generally bright.

Q. Shiny?

A. Yes, sir.

651 Q. When you hold a candle up it will glisten?

A. Sometimes, if it is not powder-burned.

Q. How do these kinds of ores generally lie in a mine?

A. In pockets.

Q. Is there any regular formation about the deposits?

A. The general characteristics are about the same. There is a difference in the size and a difference in the way they are formed.

Q. I will ask you if there are any well-defined walls in any of these mines in Darwin that you have mentioned?

A. Yes, sir.

Q. In what mine? Is there any in the Stirling?

A. I do not think there is. There is a slip showing the wall for a short distance. There is a well-defined wall in the Custer, and also in the Defiance.

Q. Do not these mines run in what you call pockets, pipes, and chimneys, and things of that sort?

A. Yes; in chutes.

Q. Is it not a common thing to run on a very narrow vein of ore of this kind and follow it up to see if you would not strike something?

A. It depends a good deal on which end of the little strata you run in. If you start to follow the end away from the body you find the end generally.

Q. You would not start from the little end if you start from the body?

652 A. These little ends extend out and are generally followed until they are lost. In cutting across the country, exploring for ore, you strike the small end and follow the small end. It generally ends in the lime.

Q. How did this tunnel end? Was it a cross-cut?

A. As near as I remember — I did not observe it very closely— there was a tunnel run in and a side drift started from it.

Q. There are two drifts to that?

A. Yes, sir.

Q. North and south drift?

A. I do not think I went in the south drift.

Q. Did you go into the drift with the winze in?

A. Yes; I went in where the body of ore was.

Q. That is the south drift?

A. I have not got the localities.

Q. One of the drifts you did not go in at all?

A. One of the drifts further in the tunnel.

Q. You really do not know what that drift contained?

A. No, sir.

Q. Now, did you go in any tunnels or excavations above this long tunnel—what we call the long tunnel?

A. I went above, as far as I could go, to where they had worked out the ore; then I left a candle burning there and went around and came down to that point again, showing that there had been a connection made through.

Q. Is that the only excavation above that you went into?

A. I went into several and crept all through the excavations. We went through all that we could get through.

653 Q. Are there not a great many on the ground at the top that have no connection with the tunnel at all?

A. Oh, yes.

Q. Did you go into them.

A. Yes, sir.

Q. All of them?

A. I think all of them.

Q. About how many did you go in?

A. We must have crept into six or seven places; I did not pay much attention; we were going until we found every place to go in and came back again.

Q. Do you remember the first winze that you came to in that drift off of this tunnel? You came to a winze?

A. We came to a winze. McKenzie called my attention to it. He said, "I helped to hoist the car while up there."

Q. Do you remember an upraise right across the drift that went up?

A. Yes, sir.

Q. About what was the size of that upraise?

A. I did not measure it; it was quite an excavation made there, I thought.

Q. Did not that connect with the surface?

A. I could not get through that way.

Q. There was a small hole?

A. Yes, sir.

Q. I believe you could crawl through?

A. I did not crawl through. I put a light there.

Q. You could see the connection through to the top?

A. Yes, sir.

Q. Was there not ore in that upraise?

A. A little ore in the roof.

Q. In the hanging roof?

654 A. Yes; but it is worked through just to a shell. We talked over that matter and pointed out it was worked through and could not expect much ore from it. They came down from above and shelled it out.

Q. Could you determine the width of that by looking at it—the thickness of it?

A. Pretty near; I could judge the ground—not quite to a foot or so. There was very little ground to work, we thought.

Q. How far was it from the surface?

A. We did not measure.

Q. You did not judge from its distance from the surface that there was no ore?

A. That was not the way the ore was going. It seemed to make a little kidney in the roof. It was going up the way they came down.

Q. Do you know whether they worked down from the surface or worked from the winze up?

A. They must have worked both ways.

Q. There was only a small opening connecting the top and the bottom?

A. A small place there; a man might crawl through with an exertion.

Q. This upraise was started, of course, being an upraise from the tunnel roof?

A. It should have been.

Q. Could you determine the thickness of that ore body in the hanging wall of that upraise?

655 A. I could not tell exactly, but I came down there. That looked there, if there was any ground to work, as if it might produce some ore, but when we came down from above and saw the shell we concluded there was no ground to work, to speak of, worth bothering about.

Q. Was not the ore a foot or more thick on the edge of the upraise at the roof of the tunnel?

A. There was a spot of ore there that I think was a foot thick.

Q. Was it not six feet or more in width?

A. I did not see it that way.

Q. And did it not go up a long distance, ten or twelve feet?

A. I did not see where it went up that distance.

Q. How long were you in examining that?

A. I was there probably three-quarters of an hour or an hour.

Q. In that one place?

A. No; in that mine.

Q. In the whole mine?

A. In the mine from the tunnel up.

Q. Three-quarters of an hour?

A. Maybe an hour.

Q. Do you not know that a man could not examine the working from the tunnel up and give a decided opinion in three-quarters of an hour?

A. I examined it sufficient for my purpose to give a decided opinion not to risk any money in taking this out; that there was not enough to justify it. That was all I was there to deter-

656 mine, in my own interest and no one else's.

Q. Who had possession of the mine, if any one, at this time?

Mr. REDDY: I object to that question. It is not proper cross-examination, and on the further ground that it is a question of law.

Mr. MINER:

Q. Why did you consider this mine abandoned at the time you went out there?

A. I saw no one there.

Q. Was that the only reason?

A. I heard it was abandoned.

Q. Who did you hear it from?

A. I heard it from, I think, Mr. Reddy.

Q. Can you state the time, the month and year, that you heard that?

A. It must have been some time along in the spring.

Q. What year?

A. Last year; October, 1885.

Q. Did you not also hear that John Wilson had relocated it?

A. No; he had not relocated it at that time.

Q. You heard from Mr. Reddy, then, that it was abandoned; abandoned by whom?

A. By the Southern Development Company.

Q. Did he state when they had abandoned it?

A. No; I did not ask him.
Q. Why did you not locate it?

Mr. REDDY: We object to the question on the ground it
657 is not proper cross-examination.

A. I did not think it worth locating; it was not relocatable at that time; the year would have to expire.

Mr. MINER:

Q. Did you consider the mine of sufficient value to relocate?
A. I did not.
Q. Why do you say it was not subject to be relocated at that time; did you not have some idea of relocating it?

Mr. REDDY: Objected to as not being cross-examination, and it is a question involving a question of law only and his reasons for not doing something are immaterial.

A. I did not.

Mr. MINER:

Q. Did you intend to take the ores out when you say the mine was not subject to be relocated?
A. Yes; I did.
Q. Did you intend to commit a trespass?

Mr. REDDY: Objected to as not being cross-examination and as being an improper question to put to the witness.

A. We intended to take out the ore; if any one claimed it we would pay them what it was worth.

By Mr. MINER:

Q. Who do you mean by "we?"
A. McKenzie and myself.
Q. You had a kind of an idea that some one would claim the ore?
A. They might.
Q. Who did you think would claim it?

Mr. REDDY: We object on the ground that it is irrelevant, immaterial, and not in cross-examination.

A. I did not know.

658 Mr. MINER:

Q. You knew that Mr. Reddy was attorney for the Southern Development Company at the time he told you that, did you not?
A. Did I know he was retained?
Q. You knew he was an attorney for the company?
A. Yes, sir.
Q. Did you have any further conversation with Mr. Reddy about the Southern Development Company's right to that mine?

Mr. REDDY: I object to the question on the ground it is not cross-examination and is immaterial and irrelevant.

A. At that time I do not think I did.

Mr. MINER: At any other time?

Mr. REDDY: Same objections.

A. I saw him about a month ago and he said he thought he would want me up here as a witness; that was all the conversation I had.

Mr. MINER:

Q. That was not the question I asked.

A. "At any other time," you said.

Q. About the right of the Southern Development Company to that mine?

A. No, sir.

Q. Why did you not go down these winzes in the lower levels of the mine?

A. Because I had been present when the evidence was given in Independence, and I concluded there was nothing to see in the shape of ore there.

659 Q. Explain what evidence you mean.

A. I mean the witnesses that testified that the mine was dug out, and had shown maps and diagrams of it leading me to believe that it was dug out.

Q. Whose witnesses and in what case?

A. In this case of The Southern Development Company against Frank Silva.

Q. The criminal suit against Frank Silver, you mean, in Inyo county?

A. Yes.

Q. That was The People of the State of California against Frank Silver?

A. Yes.

Q. What witnesses do you refer to?

A. I refer to Mr. Forman and——

Q. Witnesses for the prosecution or the defense in that action—that is what I want to know?

A. I have reference to the surveyor—I forget his name—and Mr. Flannigan and others.

Q. And from that you did not care to go down and look yourself?

A. That is what we concluded. I said, "There is no use in going below Mc., they did not make out any evidence that it was lower; here is where they claimed there was forty tons of ore. Here is where we must look for it."

Q. Was it not in the ore chamber that they claimed on that trial there were forty tons of ore?

Mr. REDDY: We object to that question on the ground that it is not cross-examination and is immaterial and irrelevant.

660 A. I understood it to be above the tunnel level and not below.

Mr. MINER:

Q. Explain what you mean by that; what was above the tunnel level?

A. This ore.

Q. The forty tons?

A. Yes.

Q. Was it not in what is called the ore chamber below the tunnel level that it was claimed in the criminal case?

Mr. REDDY: I object to the question as immaterial and irrelevant and not cross-examination.

A. I did not so understand it.

Mr. MINER: You claim to be pretty well acquainted with the character of ores in the Sterling mine?

A. I have worked nearly two hundred tons of it in the furnace.

Q. Of the ore out of that mine?

A. Yes,

Q. When?

A. From time to time during the last six years.

Q. How many tons, if any, did you work of the ores of the Sterling mine before the purchase of the mine by the Southern Development Company?

A. At one time I worked a little over six tons, I think, as near as I can remember.

Q. Give the value of each as you go along.

A. There was about five and a half tons of that selected galena ore that went forty-seven ounces or thereabouts.

Q. Forty-seven ounces of what?

A. Of silver.

Q. What percentage of lead?

661 A. I did not try it for lead. When that load came in there was about a half a ton of second-class ore fetched separate for the purpose of determining the value of it to see if it would pay to ship. That went about seventeen ounces.

Q. When you say seventeen ounces what do you mean?

A. Silver.

Q. A ton?

A. Yes.

Q. What percentage of lead did the second-class have?

A. I did not try it for lead. Lead was of no value to us then, only in the benefit of smelting, We got no extra price above refining and shipping. Lead was low, and we did not make anything on it. We might have made a few dollars. We lost money on lead down there. Some time after I went out there and made Frank Silver an offer for all the ores on the dump; two and a half dollars a ton I paid him for it. The ore was hauled to the furnace and weighed something over one hundred and fifty tons. The average of the assay was about sixteen and a half or seventeen ounces. I did not try it for lead.

Q. Sixteen and a half or seventeen ounces of silver per ton?

A. Yes.
Q. How far did you have to haul it?
A. We hauled to Darwin, about twelve miles.
Q. Twelve miles?
A. It is about twelve miles from the Sterling mine to Darwin. That is all the ore I ever bought from Frank Silva in that mine.
Q. This was all before the sale. After the sale by Silva to the Southern Development Company did you get any ore from
662 that mine?
A. Yes; we got all there was taken out from this body.
Q. How much?
A. I could not say exactly to the ton. I think it was 35, maybe 36.
Q. Who did you get it from?
A. I bought it from Mr. Yerington. I think I paid him three dollars for it.
Q. Three dollars on the dump?
A. Yes.
Q. What did that ore go; what was the value of that?
A. I think it was twenty-two ounces silver. I did not try it for lead.
Q. Why did you not try these ores that were worked out of that mine for lead?
A I had no object in doing so. I could tell by the weight of it that there was sufficient in it for my purpose.
Q. What was your purpose?
A. To smelt dry ores with them. They carried a large percentage of lead.
Q. Do you know out of what part of the Sterling mine this thirty-five tons of ore came?
A. Not by actual knowledge. I heard it came from the lower level.
Q. Did you hear it came from the ore chamber?

Mr. REDDY: We object to the question as hearsay.

Mr. MINER:

Q. If you heard that this came from the lower level, why did you not go down there to look at that place?
A. At the time I went down about this ore I did not go into
663 the mine.
Q. At the time you went with Mr. McKenzie you had heard that the thirty-five tons came from the lower level. Was not that the ore which you have designated above as the forty tons of ore which you supposed came from the upper level?

Mr. REDDY: I object on the ground that the question is based upon hearsay and is not cross-examination, and also on the ground that the question is unintelligible.

A. I do not understand that question.

Mr. MINER:

Q. I will explain it. You have referred to forty tons which you supposed came from the upper level.

Mr. REDDY: I object on the ground that the witness has not stated he supposed anything of the kind.

Mr. MINER:

Q. You have referred to forty tons of ore which you stated you heard or understood from the evidence in the case of The People of the State of California against Frank Silva came from the tunnel level or above it. Now, I ask you if that forty tons of ore, which you heard something about in that criminal trial, embraced the thirty-five tons which you purchased after the sale of the mine and when five tons more embraced it and included the thirty-five tons which you now say came from the lower levels, as you understood?

Mr. REDDY: I object on the ground that the witness has not testified to any such state of facts as represented by counsel. The witness has not represented that he learned through the evidence given in The People against Frank Silva that this thirty-five tons of ore came from the lower level. The witness said he heard so; he
664 did not state how he heard it or when he heard it, and on the further ground that it is not in cross-examination of anything testified to by the witness.

A. I supposed there was still forty tons of ore left above the tunnel level, and that was the point I wanted to see.

Q. Why did you suppose there were forty tons left above the tunnel level?

A. From the evidence of the case in Independence. I think I heard some testify—Mr. Price, I think—that it did not exceed forty tons above. I think he told me so privately, too.

Q. Now sir, how did this mine compare with the other mines that you have worked down there in that mining district, the New Coso mining district, as concerns the permanency of the ore bodies or strata?

Mr. REDDY: We object to the question on the ground that it is not in cross-examination and on the ground that it is immaterial how it compares with the mines named, and also irrelevant. There is no question about the value of those mines, whether they are permanent or not permanent, and such an inquiry would involve the determination of the value and permanency of those mines or else we would virtually have no comparison.

A. This mine would compare in this respect with other mines in the district; it would show some spots of ores that others did that has been worked out that we considered exhausted.

Mr. MINER: Are there not some of these mines that you have mentioned being worked now and have been worked time and time again after they were practically considered exhausted?

665 Mr. REDDY: I object to the question as not being cross-examination and as immaterial and irrelevant.

A. There are strata and streaks of mines that have been left by the company that are worked by the chloriders that go in and take it out and try to make grub wages, if they are lucky enough to develop a little bunch.

Mr. MINER:

Q. Have you not worked mines with no better showing than the Sterling had at the time of your visit and made some money out of them?

Mr. REDDY: Objected to on the same ground.

A. No, sir; I have not made money out of them; I have lost money.

Mr. MINER:

Q. Have you not started in on ore bodies no larger than those in the Sterling at the time of your visit and worked them until you disclosed an ore body of sufficient size to pay you for your labor?

Mr. REDDY: Objected to on the same ground as to the preceding question.

A. I have started in to prospect—to hunt for ore where there was very little indication—but then I was going into new ground and look for something that I could not look for in ground that was not explored before.

Mr. MINER:

Q. Did you notice any ore back of this winze which we have referred to in this evidence?

A. I do not remember noticing anything there. We went right up in the raise.

Q. Did you examine the floor of the tunnel?

A. No.

Q. You made no examination to see if these ores or any ore body extended down in that mine?

A. Not a bit.

666 Q. It is not a very common thing in mines of this kind for the strata of ore to pinch out and then get large again, &c.

Mr. REDDY: Objected to on the same grounds as before.

A. They are often very irregular in size, and sometimes they open up into large bodies and sometimes they disappear to nothing.

Mr. MINER:

Q. Do you know anything about the condition of that mine today as far as it contained ore or not?

A. Only what I have stated.

Q. Would this mine be of any value if it contained five hundred tons of ore of the same kind as that which you purchased as having come from the mines?

Mr. REDDY: Objected to as hypothetical and not being cross-examination, and immaterial and irrelevant. We are dealing with what exists.

A. It would depend altogether upon the cost of extracting and reducing the same. If there was anything let over and above that it would be of some value.

Mr. MINER:

Q. What was the value of the ore that you bought from it?

A. I have told you.

Q. You have stated you paid that much for it, and it went that much. You did not state the value above expenses?

A. There was no profit in it directly by using it by itself and hauling it over. I paid nine dollars for iron ore containing nothing in the shape of silver or lead either to assist in smelting, which was of no value, only assisting in reducing the ores; still there was some silver in that, which helped to pay expenses, and the lead was valuable for flux.

667 Q. When you took this ore which you purchased which came from the Sterling mine *and* used it in your furnace without ascertaining what its value was?

A. I did ascertain its value by assay. I bought it because it was a benefit to me, because I expected to make money out of it in assisting me to smelt other ores.

Q. What did it assay?

A. Which lot? I could not tell you what percentage I worked it.

Q. What did the five and a half tons assay?

A. Forty-seven ounces, I said. I think I paid a dollar an ounce all over twenty-five ounces. We paid eighty cents an ounce all over twenty-five ounces. We might have reduced it to that. We had paid a dollar an ounce all over twenty-five ounces. He paid the expenses of hauling it in. I paid him for this five and a half tons. I am not positive, but I think the books will show—Johnnie Eddy's books will show—what we paid him an ounce, because we were partners when we bought that ore.

Q. The 150 tons did you pay so much for?

A. Two dollars and a half a ton.

Q. And nothing for what it went over twenty-five ounces?

A. It did not go over that.

Q. Was this five and a half tons called first-class ore?

A. It was so shipped to us as first-class ore.

Q. Was it in fact?

A. I think so; it was first-class ore from that mine. It was pretty good grade ore.

668 Q. Is it not a very uncertain business working mines i that mining district?

(Objected to by counsel for the complainant as immaterial and not cross-examination.)

A. Uncertain in what respect?

Q. Uncertain in the respect of making money. It is no sure thing making money out of any mine down there?

A. There is no guarantee; you have got to take your chances.

Q. You have worked these mines yourself for years in that district, have not you?

A. Yes.

Q. For how many years?

A. I went there in the fall of 1874. I have been away from there several times.

Q. About how many years at a stretch have you put in your work there, put it altogether?

A. I guess I have been there seven or eight years altogether.

Q. Have you made a success of any one mine down there?

(Objected to by counsel for the complainant as immaterial and not cross-examination.)

A. I have made a financial success of every mine that I have had anything to do with in working. I made it pay a little.

Q. You work very carefully and economically, do you not?

(Same objections by complainant as to the last preceding question.)

A. I try to regulate myself and work with judgment.

Q. Why did you quit working in those mines, or have you quit?

(Same objections by complainant as to the last preceding question.

668½ A. Which mines?

Q. I speak of all these mines that you have named. I want to know why, if they were paying, did you quit working.

A. I sold my interest in the Defiance. I am working Lucky Jim, and made it pay. I worked the Custer, and made it pay, and will try to make it pay again when I get ready to work it and other mines there. There are times when we are regulated altogether by the market. There was a time that we lost money on producing lead. Lead was only three cents a pound, and it costs us a good deal to get it. Now there is more inducement for us to work these mines, and when there is no market which gives us a margin I quit working.

Q. Was not that Lucky Jim abandoned some time ago?

A. Not abandoned. They had a miner in charge; they did not pay him, and he fell into possession of the mine. He is working there.

Q. They quit and this man is working there?

Mr. REDDY: We object to that. Let the counsel put it in the form of a question and not make statements.

Mr. MINER: Are you in partnership with the man who is working the Lucky Jim?

(Objected to by the counsel for the complainant as immaterial, irrelevant and not cross-examination.)

A. Yes.
Q. What is his name?
A. J. A. McKenzie.
Q. The same McKenzie that you have referred to in your testimony?

Mr. REDDY: The same objection to all these questions.

A. The same man.
669 Mr. MINER: Is it not a fact that you and he commenced working that mine after the company had given it up who formerly owned it?

(Objected to by the counsel for complainant on the same ground as to the preceding question.)

A. We commenced working in that mine after he came into possession of it in connection with his slag dumps and some mines that I owned, and worked them together and made it pay.
Q. What is the value of the Sterling mine to-day, if you know?
A. If that includes the buildings around it——
Mr. REDDY: No; the mine.
Mr. MINER: The value of the mine at the present time from your own knowledge.
Mr. REDDY: What do you mean? Including the things on the surface?
Mr. MINER: The value of it as a mine without the improvements at the present time.
A. I would not care to pay two dollars and a half to have it recorded, if it was relocatable, in my judgment.
Q. You have not seen it for ten months, have you?
A. No.
Q. And you never saw the lower levels?
A. I never saw the lower levels.
Q. Then do you know what they are?
A. No; only from hearsay.
Q. Can you state, then, what the value of that mine is?
A. I am stating what I would give for it.
670 Q. I am not asking what you would pay for it; I am asking you whether you know the value of that mine. You can say "yes" or "no" to that question.
A. I do not know the value of it.

(An adjournment was here taken until two o'clock.)

Afternoon Session.

JOHN S. GORMAN recalled for further cross-examination:

Mr. MINER:

Q. How did you happen to speak to Mr. Reddy about this mine being abandoned?

(Objected to by counsel for the complainant as not being cross-examination and as immaterial and irrelevant.)

A. I was speaking to Mr. Reddy about being short of lead ore. It came up in that manner, and he spoke about the Sterling mine being abandoned.

Q. Did he request you to go there to get lead?

(Same objection as to the last preceding question.)

A. No.

Mr. MINER:

Q. Did you say anything to him about going to that mine to get lead?

(Same objection as to the last preceding question.)

A. He told me that the company had nothing to do with it, I believe, as near as I can remember; that they had abandoned it.

Q. Did you say anything then about going into the mine and getting ore?

671 A. I told him I was going through to take a look at it.

Q. What did he say?

A. He said he had no authority that the company was out of it, and had nothing to say about it. The mine was abandoned.

Q. When did this conversation occur?

A. At the time I stated. I think it was when Mr. Reddy was down there and put Mr. Henry Mc. in charge of the Defiance mine. I met him at the station coming up on his way to San Francisco.

Q. Did Mr. Reddy request you to go to that mine and expert it?

A. No.

Q. Did he ask you afterwards the result of your investigation?

A. No; I told him afterwards I was out there and did not see anything worth while taking.

Mr. REDDY:

Q. State when you first told me?

A. That I had been out there and looked at it?

Q. Yes.

A. The next time that I saw him, which was at the time of the strike when he went to Darwin, last fall.

Q. In November last?

A. Yes.

Q. You referred in your testimony here to the fact that you knew the mine was sold because you saw some men going out to visit it. Who were the men that you saw going out?

A. Laboring men with tools and teams going out. I afterwards saw Mr. Yerington and Mr. Laws, I think, going out. I am not sure about Laws, but I saw Mr. Yerington going out. I saw material going out to work the mine.

672 Q. Do you not know that during the year 1884 the Southern Development Company of Nevada had a man out there in charge of that mine—during some part of the year 1884?

A. At the time I went to buy this ore that was sold to me by Mr. Yerrington there was a man in charge then by the name of Bryson.

Q. Take the year of 1885—last year. Do not you know they had a man out there then?

A. I do not.

Q. Do you not know that during the year 1885 the same company had a man in charge——

Mr. Reddy (interrupting): We will bring the man who worked on it. It is no use detaining Mr. Gorman about this. I will put the man on the stand.

Mr. Miner: What was it that Silva exchanged with you for this bar that you speak about?

A. Three drills.

Q. What were the size of them?

A. I did not measure them; I should judge they were from a foot and a half to two feet and a half.

Q. Old or new?

A. They had been used. There were drill points on them.

Q. Give the size of the drill.

A. The size was an eighth of an inch larger than the drill I gave him.

Q. State the conversation with Mr. Silva at the time he got this long steel bar.

673 A. He asked me if I had any steel long bars. I told him I had some small steel bars; for him to come over to the cellar where I kept it and see if there was anything to suit him. He came over and picked out a bar of steel from five to seven feet in length. I think they came in those lengths. He took it down to the store and weighed it on the scales. I do not recollect exactly what it weighed. He told me before—while we were in the cellar—that he wanted to make one long drill. He said it would come in handy in prospecting grounds—feeling ahead; something like that. We had some other conversation there.

Q. I want his exact words about his prospecting the ground or feeling ahead; I want his exact words.

A. That is exactly—the way I gave it. That is all I can recall definitely of the conversation. We had some talk about a spoon.

Q. You stated in your direct examination that he said it would come in handy prospecting.

A. Prospecting or feeling ahead.

Q. Now you say he said it would come in good feeling ahead; which words did he use?

A. He said in prospecting ahead, feeling ahead.

Q. Which did he say—prospecting ahead or feeling ahead?

A. Prospecting, I think.

Q. Might he not have said it was a handy drill to have to prospect with?

A. No; he did not say that.

Q. Might he not have said it was a handy drill to have in
674 prospecting?

A. No, sir.

Q. Then what did he say?

A. He said feeling ahead.

Q. Did he say that?

A. That is what he said as near as I remember.

Q. Did he use the words "feeling ahead," or did he say "prospecting?" I want to know this absolutely.

Mr. REDDY: The witness has answered the question three or four times.

Mr. MINER: Will you swear positively at that time Frank Silva used the words "feeling ahead?"

A. I think he used both words, "prospecting" and "feeling ahead." I am swearing positively to everything I say.

Q. When you say you think, that is not positive.

A. Both words were used.

Q. You are certain of that?

A. It is quite a long while ago; I am as certain as I could be.

Q. If you are not positive of it you can say so?

A. I am pretty positive of it.

Q. That is your recollection of what he said?

A. Yes.

Q. Might your recollection be perfect on that ground?

A. A man's recollection is likely to err when there is a long lapse of time.

Q. Now, did he tell you this at the time that he got the drill—on the day that he got the drill?

A. While we were in the cellar.

675 Q. How did this question arise about the spoon; are you positive about that?

A. I am not so clear on that.

Q. He might not have said anything about a spoon?

A. Yes; there was some talk about a spoon. I cannot recall the conversation.

Q. What occasioned the talk about the spoon?

A. The long drill fetched it out.

Q. Was this at the same time?

A. Yes; in the cellar when we were getting the steel.

Q. I understood you to say a little while ago that a few days afterwards he came to you and said something about welding two spoons together?

A. Read my testimony and you can see.

Q. I understand you are not now positive about the conversation in regard to the spoon?

A. No; I could not swear positively what conversation we did have about that.

Q. Was any one present besides you and Silva when this conversation took place?

A. No.

Q. In whose cellar did it take place?

A. In Mr. Reddy's and my cellar.

Q. In what place?

A. At Darwin, where we keep our powder and tools, extra steel, candles, etc. It was our magazine at that time.

Q. Were you and Mr. Reddy interested together at that time?

A. We were partners, I think. Nixon had bought in.

676 Q. How long have you been partner with Mr. Reddy?

A. About five years.

Q. Are you still in partnership with him?

A. I am interested in some mines with him, not in this Defiance. We were partners in that cellar together.

Mr. REDDY:

Q. You mean joint owners?

A. Yes.

Q. Tenants in common of the property?

A. Yes.

677 Mr. MINER:

Q. What year did this conversation take place in, about the steel?

A. 1883.

Q. You said 1884 a little while ago; that is the reason I asked you to be sure.

A. It was the year Wixon bought in. I can get the exact time by looking at the company's books.

Q. You do not positively know what year it did occur in?

A. It is about two and a half years ago.

Mr. REDDY: That would be 1884?

A. It is not quite two years and a half ago.

Mr. MINER:

Q. This conversation must have been in 1882 or 1883?

A. No, sir.

Q. In February, 1884, the Southern Development Company bought the mine.

A. Then it was in 1883.

Q. What part of the year 1883?

A. It was in March or April.

Q. At the time Silva obtained this long piece of steel from you were any other men working at his mine besides himself?

A. I do not think there was. I believe he discharged his men and they were working for me.

Q. I want to know for certain about that.

A. I could not swear who he had there, or whether he had anybody.

Q. Do you know whether Silva ever used that bar of steel in the Stirling mine or not?

A. I do not. I never saw it after it stood in that corner of the store.

678 Q. Do you know whether he ever took it away from Darwin with him?

A. I never saw the bar after that.

Q. In your judgment as an expert on these matters can a person tell the value of the ore which is in the Stirling mine without assaying—merely by looking at it?

(Objected to by the counsel for complainant as not being proper cross-examination and as irrelevant and immaterial and asking the witness for his opinion as to the ability of other men to determine the question put.)

A. I would not be able to determine the value.

Mr. REDDY: That is not an answer to the question. He wants you to tell him what other men can do.

Mr. MINER: Read the question to the witness, Mr. Examiner.

(The examiner reads the question.)

A. I am no expert. What I know I have learned by actual experience.

Q. You have given the exact definition of an expert. An expert is one who learns by experience.

Mr. REDDY: I object to counsel giving the witness any more lectures or definitions. We do not want the witness to be misled by false definitions.

Mr. MINER: I will ask another question.

Q. You state you are not an expert. What does an "expert" mean?

A. One who is proficient in something.

Mr. REDDY: I move to strike that out. We are not going
679 into anything of that kind. It has no more bearing on the case than the moon has.

Mr. MINER:

Q. You have had a great deal of experience with ores of the kind that the Stirling mine produced?

A. Well, yes; considerable. There is a certain similarity between them. There is a difference in color and character.

Mr. REDDY: The other branch of the question remains unanswered. Do you know what other men can tell?

A. I do not.

Mr. MINER:

Q. From your experience and knowledge as a miner can you tell the value of the ores such as the Stirling mine produces by handling and looking at the ores alone?

A. I cannot.

Q. How do you determine the value of such ores?

A. I endeavor to take an average sample and assay the same; not to take pieces, but to get an average of the whole.

Q. And from the assay you determine the value?

A. Yes, sir.

Q. What is the usual width of ore bodies in the New Coso mining district that you know of from your own knowledge and experience?

Mr. REDDY: You are assuming they have a usual width. Why don't you ask him?

Mr. MINER: I will withdraw that question and ask another one.

680 Q. Do ore deposits in the New Coso mining district—ores similar to the ores in the Stirling mine—have any uniform width?

A. They are very irregular in width.

Q. In what formation does the ore lie in the Stirling mine?

A. I never tried the formation. From the looks of it I think it is lime.

Q. Is it usual with the ores in lime formations to find well-defined walls?

A. In some cases.

Q. I am speaking of this district—in the New Coso mining district.

Mr. REDDY: You are assuming that the veins in the New Coso district are all in lime formation. Did it ever strike you it might be in contact, lying between two formations?

A. There are exceptions to that. Some of the mines are found in contact between two formations and a granite foot wall.

Mr. MINER:

Q. Name the mines that have that.

A. The Defiance and the Independence and other mines along that lode, a continuation of the same, which showed a granite foot wall.

Q. What is the formation of the other wall?

A. There is a lime hanging wall.

Q. Is the Stirling mine on the same lode or ledge as the Defiance or the Independence?

A. I do not think it is.

681 Q. Then between what kind of a formation does the ore lie in the Defiance mine?

A. Granite foot wall and lime hanging.

Q. In what mine did you say?

Mr. REDDY: You asked him about the Defiance.

Mr. MINER: I meant the Stirling. I will ask another question.

Q. In what kind of a formation does the ore lie in the Stirling mine?

A. I never tried the formation; I think, from the looks of it, it is all lime.

Q. Can you tell by looking?

A. Yes; to some extent.

Q. I understood your entire examination of this mine since it was purchased by the Southern Development Company was made in three-quarters of an hour.

A. In three-quarters of an hour to an hour. I do not think we were over that time in the mine.

Q. What part of that three-quarters of an hour or an hour did you spend outside of the mine, and what part inside?

A. Only while we were passing out to get around, which would probably be about a minute or two.

Q. Where did you spend most of the time in the mine?

A. In the stopes, crawling around, discussing the matter, and looking for ore.

Q. Did you have any tools with you?

A. We had a hammer and a small pick.

Q. Did you use them?

A. We broke off ore.

632 Q. What kind of ore?

A. Some carbonate and some galena.

Q. Was it first-class ore or second-class?

A. I should judge it was a mixture of both.

Q. Describe the color of the ore.

A. The carbonate was reddish and grey; the galena was a bright steel color.

Q. Is it not an encouraging sign of a formation of that kind, such as you saw in the Stirling mine, to find ore of that kind in it?

A. It would be considered encouraging if it was in new ground and unexplored country.

Q. Never having examined the lower levels, you do not know to what extent this mine was explored, do you?

A. I do not.

Q. How is a mine of that kind usually explored?

(Objected to by counsel for complainant as not proper cross-examination and as immaterial and irrelevant.)

A. By work.

Q. What kind of work?

A. Manual labor, with the assistance of powder and drills.

Q. Sinking shafts and running drifts and tunnels?

A. Yes, sir.

Q. Did you ever know a mine to be explored by drill holes of eighteen inches in length?

A. Yes; I have seen drill holes put in that length.

683 Q. For what purpose?

A. To put powder in to blow out the rock.

Q. Did you ever know a man in a country of that kind, in a mine like the Stirling, in that formation, to attempt to explore a mine with an eighteen-inch drill?

A. The eighteen-inch drill would assist him in making a hole to put the powder in.

Q. Now, if your knowledge of that mine and of the character of the ores that are in it, and of the lime rock formation surrounding the ore bodies, when you see a man drill a hole for the mere purpose of exploring the extent of the ore bodies in the mine?

A. Would I drill a hole for that purpose?

Q. Yes.

A. Not unless I shot it off.

Q. Will one drill hole in an ore body several feet long and several feet high explore it so that you may know the extent of it in a formation such as exists in the Stirling mine?

A. It depends upon the thickness. If this drill hole would reach through it and strike lime it is pretty well explored in that direction.

Q. Might it not go through lime and strike ore again?

A. It might.

Q. Is it not, as a fact, in the Stirling mine and mines of that character, the ore body and the lime is mixed up in different places—a conglomerated mass?

A. There are lime horses found interspersed through it.

684 Q. So that instead of a drill hole leading a person to believe that the ore was out it might strengthen the idea that they would have, that it was still lime, might it not?

A. If he struck lime rock in drilling this hole he would be at the end of that body. What he might find afterwards would be another thing.

Q. That lime might be a horse, and he might go through it and strike some more ore?

A. Certainly.

Q. Supposing a man should put in several holes of twelve inches?

(Objected to by counsel for complainant as not being cross-examination and as immaterial and irrelevant.)

A. For what purpose?

Mr. MINER: I will withdraw the question.

Q. How did you come to visit the Stirling mine in 1876–'77?

A. I went in there in company with J. K. Maddox, of San Jose, to see if there was anything in that property worth bonding or trying to sell.

Q. How long has that mine been worked, to your knowledge?

A. There was some work done on it then. I cannot tell how much before that time.

Q. Describe the work done on it at that time.

A. As near as I remember, there was a small winze sunk on the surface or shaft and an opening or two made a little further on in the surface showing a little ore on the dump and a little ore in sight.

Q. Who owned the mine then?

685 A. I think, but I am not positive, that it was Frank Silva who was there, but I do not know whether he owned it or not. I know he first fetched the samples to Maddox, and he first called my attention to it, and we went out together to examine, and we took samples, but the assay was not satisfactory and we let it drop. I afterwards was written to about that mine from below.

Q. By whom?

A. By H. P. McNevin. He wrote to me when I was working the Custer, in 1880, asking me to go and see a mine about four miles from the junction.

Q. All I want to know is what your knowledge is.

A. And took samples and let him know what I thought of the mine. I took it for granted it was the Stirling mine and wrote the name down. He offered me inducements. If the mine pleased me I could put up a furnace and it would not cost me a cent. He wanted to join me if it was a good property. I wrote back that I had examined the mine some years before, and the ore was too low grade and there was not enough of it to justify erecting a furnace and testing it. I did not hear anything more about it until Frank Silva came up from the city. He was down there trying to dispose of the property. He came after me in rather a rough manner, saying I had broken up a sale of his. It seems this was the property he was trying to sell. I told him these men were friends of mine; that

686 they asked my private opinion about the mine and I gave it. I had every inducement to go into the mine; that it would not cost me anything but my experience. He said I did not know anything about the mine. I told him I spoke of the mine as I saw it then. I did not know what work he had done on it since, but I did not consider it was a good investment for my friends, and I was going to notify them. I read him one or two letters to this man showing him I was protecting their interests.

Q. What I am after is your visits to the mine, your knowledge of the mine as a mine, and not all this conversation.

A. All right. I did not visit the mine at that time.

Q. You have stated all your visits to the mine?

A. Yes, sir.

Q. Did you have any conversation with Mr. Yerington or any one connected with the Southern Development Company immediately preceding the purchase of the mine?

A. I do not think I did. I had a conversation with Mr. Yerington shortly after.

Q. When was that?

A. When he was on his way over there to look at the mine.

Q. What was that conversation?

(Objected to by complainant as not proper cross-examination, the witness not being produced for that purpose.)

A. He asked me what I would smelt ore for a ton from the

687 Stirling mine, at Darwin.

Mr. MINER: I do not care about all that.

Mr. REDDY: Let him answer the question as you put it. Either withdraw the question or take the witness' answer.

Mr. MINER: Then I will withdraw the question, because the answer is not responsive.

Q. Are you and the defendant, Frank Silva, on good terms at present?

A. We are on speaking terms, the same as we always have been; we never have had a word.

Q. Are you feeling friendly to him?

A. The same as I ever was; I have no animosity towards the man in any way, shape, or manner; no ill feeling.

Q. Did you ever have any?

A. Never did, only this conversation that we had at this time; that was five or six years ago, and it only lasted a little while; those were the only ones we ever had. He worked for me a good deal. I feel as friendly towards him as a man can towards another who is not intimate.

Q. Did you ever tell Mr. Yerington about Silva getting this long bar of steel from you?

A. I never told Mr. Yerington anything about the long bar of steel.

Q. Did you ever tell the attorney of Mr. Yerington or of the Southern Development Company?

A. I mentioned it to Mr. Reddy in Independence. We
688 were talking the matter over; it came up when these holes were found; it recalled to my mind the steel; afterwards I mentioned the matter to Mr. Reddy.

Q. Why did you do it?

A. In connection with the conversation that we had. I thought, when these holes were found, that the steel was the fellow that fixed the business.

Q. Then it was your theory which you gave to Mr. Reddy about this being the steel with which he drilled the holes?

Mr. REDDY: We object to that statement and desire counsel to put a question.

Mr. MINER: Then I will ask a question.

Q. Did you suggest to Mr. Reddy that the holes which were alleged to have been made in this mine in a certain ore chamber were made with the bar of steel which Silva obtained from you?

A. I mentioned the circumstance.

Q. I want a full answer to the question. Read the question, Mr. Examiner.

(The examiner reads the question.)

A. I told him it was a suspicious circumstance; it looked as if it were.

Q. When did you first hear of these alleged holes having been made there?

A. Some time after Frank Silva's arrest; Barney Price told me of it; he was the foreman then, I think; he came into Darwin and told me of it.

(Signed) JOHN S. GORMAN.

689 *Afternoon Session.*

E. F. PIERCE, called on behalf of the complainant, sworn.

Mr. REDDY:

Q. State your name, age, place of residence, and occupation.
A. My name is E. F. Pierce; age, thirty-three; residence, Carson City, Nevada; at present agent for Wells, Fargo & Co.
Q. How long have you been agent for Wells, Fargo & Co.'s bank?
A. Three years and two months.
Q. Do you know H. M. Yerington, superintendent of the Southern Development Company, of the Virginia and Truckee Railroad Company, and also of the Carson and Colorado Railroad Company?
A. Yes.
Q. Do you know Mr. Frank Silva?
A. No.
Q. Do you remember having any business transactions with a man by the name of Frank Silva, who was brought there and introduced to you by Mr. Yerington?
A. Yes.
Q. What business transactions did you have with him?
A. Mr. Yerington came in with a check of the Southern Development Company on the agency of the Bank of California at Virginia.
Q. For how much?
A. Ten thousand dollars, and he asked Mr. Silva what he would have, and Mr. Silva said he would have coin for twenty-five hundred dollars and a certificate of deposit for the balance. I gave
690 him twenty-five hundred dollars in coin and a certifiate for seventy-five hundred dollars.
Q. Do you know the number of that certificate?
A. I do not recollect it now. I can easily ascertain it from the books.

Mr. MINER: I will admit that it is the same certificate which is described in the second amended bill of complaint in this action, and is the certificate referred to in the evidence of Mr. Yerington and the other witnesses.

Mr. REDDY:

Q. I believe you said the check for ten thousand dollars was drawn in favor of Frank Silva?
A. Yes.
Q. Did he endorse it?
A. Yes.
Q. And delivered it to you as agent of the bank?
A. Yes.

Q. For what consideration did you deliver that twenty-five hundred dollars and the certificate of deposit which you have mentioned?

A. For this check.

Q. If I understand you righly, the consideration for which you paid him the twenty-five hundred dollars and the certificate of deposit for seventy-five hundred dollars was the check for ten thousand dollars which you have described?

A. Yes.

Q. Was there any other consideration?

A. No, sir.

Q. State whether Frank Silva had on deposit with your company or with you any money or valuables or money of any kind whatsoever at the time you delivered him the certificate of deposit and the twenty-five hundred dollars.

A. He had no money on deposit with Wells, Fargo & Co.
691 before that time.

Q. What is the number of the certificate of deposit you have been speaking about?

A. No. 24425, for seventy-five hundred dollars.

Q. That is the only certificate of deposit that you have ever issued to Frank Silva?

A. Yes.

Q. For any amount?

A. For any amount.

Cross-examination:

By Mr. MINER:

Q. Do you know whether Frank Silva, the party you have mentioned, had any money on deposit with Wells, Fargo & Co. at any of its offices outside of Carson City, Nevada?

A. I do not.

Q. That certificate was a general, ordinary form of certificate that you issued, such as you use generally?

A. Yes.

Q. Was there any particular fund set aside by you or your company to meet that certificate of deposit?

A. No.

Q. The check on the Bank of California, was that check collected by your company and the proceeds of it intermingled with its general money?

A. Yes.

Q. No specific money?

A. No; it was general cash.

Q. The check on the Bank of California was received by you and negotiated by you in the general, ordinary course of business?

A. Yes.

692 Q. And the certificate was issued to Frank Silva in the ordinary course of business?

A. Yes.

Q. Did Silva ever present to you that certificate of deposit for payment?

(Objected to by counsel for complainant as not being cross-examination and as irrelevant, immaterial, and incompetent.)

A. He did not personally present it to me.
Mr. REDDY: Did he in any way?
A. He presented it to the company.
Mr. MINER: Do you know that Silva presented that certificate to your company?
A. I presume that he presented it personally; it was presented.

Redirect examination:

By Mr. REDDY:

Q. Whether Silva had any money on deposit with Wells-Fargo at other agencies be the fact or not, you know that you issued him the certificate solely in consideration of this ten-thousand-dollar check?
A. Yes.
Q. Do you say that Silva presented the certificate of deposit for payment?
A. I presume he did.
Q. Was it presented at your office at Carson?
A. Not directly. It was presented through the San Francisco agency.
Q. At what time?
A. I am sure I could not say what day it was.
692½ Q. Was it not this year?
A. I think not.

(Signed) E. F. PIERCE.

(Testimony closed, at Carson City, on behalf of complainant.)

(Endorsed:) Opened and refiled August 9, 1886. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

693 & 694 *Testimony for Respondent.*

INDEPENDENCE, INYO COUNTY,
TUESDAY, *June* 15th, 1886.

JOHN ALEXANDER, a witness called on behalf of respondent, sworn.

By Mr. MINER:

Q. State your name, age, occupation, and place of residence.
A. My name is John Alexander; age, 57; occupation, miner and surveyor; residence, Independence, Inyo county, California.
Q. How long have you lived in Inyo county?
A. Since the fall of 1865.

Q. Are you acquainted with Frank Silva, the defendant in this action?

A. I am.

Q. How long have you known Silva?

A. Since 1873.

Q. Where?

A. I first got acquainted with him at Cerro Gordo.

Q. Have you known him in Inyo county since 1873?

A. Yes; my acquaintance has been with him in Inyo county since 1873.

Q. Do you know his general reputation for truth, honesty, and integrity, in said Inyo county, from the time you have known him up to the commencement of this action?

695 (Objected to by counsel for complainant on the ground that the testimony is incompetent, irrelevant, and immaterial.)

A. I never heard his character questioned for honesty and integrity until after the commencement of——

Q. Pay attention to the question, please. Read the question, Mr. Examiner.

(The examiner reads the question as follows:)

"Q. Do you know his general reputation for truth, honesty, and integrity, in said Inyo county, from the time you have known him up to the commencement of this action?"

A. I do.

Q. What is his general reputation and character for truth, honesty, and integrity, in said county, during the period mentioned?

(Objected to by counsel for complainant on the ground that the question is irrelevant, incompetent, and immaterial.)

A. It is good.

Q. Are you acquainted with the mine known as the Stirling mine, situated in New Coso mining district, Inyo county, being the mine described in the pleadings in this action?

A. I am.

Q. Have you ever visited that mine?

A. I did.

Q. When?

A. I visited it first on the 7th day of November, 1884.

Q. For what purpose did you visit the mine?

A. To make a survey of it.

A. Did you make a survey of it?

A. I did.

696 Q. And a map?

A. I did.

Q. Did you make anything else to represent that mine or a portion of it?

A. I made a model.

Q. Have you a map and model here?

A. I have.

Q. Did you visit the mine at any other period of time?
A. I visited the mine twice since then.
Q. State what time.
A. I visited the mine this month.
Q. Commence at the first visit you made to the mine lately.
A I visited the mine on the 3rd of this month.
Q. Before that. You visited it in May, did you not?
A. I went as far as Darwin in May.
Q. Did you go down to visit the mine at that time last May?
A. I went there to visit it, but did not visit it.
Q. Why did you not visit the mine?

(Objected to by counsel for complainant as incompetent, irrelevant, and immaterial.)

A. I was refused admittance.
Q. By whom?
A. By Mr. Jack Wilson.
Q. I will ask you to look at this letter and see if you recognize it.

(Objected to by counsel for complainant on the ground that it is irrelevant, immaterial, and incompetent.)

A. I have seen it.
Q. State what that letter is.
A. It is a letter asking permission of Mr. Wilson——

697 (Counsel for complainant objects to the witness stating what it is—the letter shows itself what it is for—and moves to strike out the prompt answer of the witness.)

Mr. MINER: I offer that as a copy of a letter sent by me, as attorney for Silva, to Mr. Jack Wilson, the party named by the witness.

(The letter is marked "Respondent's Exhibit C," and is as follows:)

"DARWIN, INYO COUNTY, CAL., *May 24th*, 1886.

"Mr. Jack Wilson.

"DEAR SIR: I arrived in this place this afternoon. One purpose of my visit to this section is to examine and make a survey of the Sterling mine. I wish to do this as an act of justice to my client, Frank Silva. I have been informed that you have taken possession of the mine, and that you will not allow me to visit it. Please let me know whether you hold possession of it for yourself or for the Southern Development Company of Nevada. I do not desire to commit any trespass, but I say to you that you will assist in the administration of justice if you will permit me to visit and inspect the mine. Please answer by bearer. I may go out to the mine to-morrow, as I think after I explain the matter fully to you you will not object to my request.

"Hoping to hear from you, I remain very truly yours,

"RICH'D S. MINER."

698 "As I know from what you told me and from the records that you had relocated the mine, I think you can give me permission to visit it."

(Counsel for complainant objects to the letter on the ground that there is no proof that it is a copy; secondly, that it is inadmissible for the reason that the original is not accounted for; and, thirdly, it is incompetent, immaterial, irrelevant, and the letter is to the defendant self-serving.)

Q. State what you know about the original letter having been sent, of which this purports to be a copy; to whom it was sent.

(Objecting to by counsel for complainant as advising the witness that the original was sent, and is leading and suggestive.)

A. Mr. Miner consulted with me as to what was best to do. I advised him to send Mr. Wilson a letter asking permission to enter the mine. He did so and received an answer from Mr. Wilson denying us permission.

(Counsel for complainant moves to strike out the answer of the witness where he speaks of the answer from Wilson, and moves to strike out the consultation between himself and Mr. Miner as immaterial and irrelevant, and for the reason that counsel has thus far had no opportunity to object to that sort of matter.)

Q. Will you look at that paper and tell me whether you recognize it (handing a letter to the witness)?

A. I do. I have seen that letter.

Q. Tell me when you saw that letter for the first time.

699 A. On the 24th of May.

Q. Are you sure it was the 24th?

A. Yes.

Q. Please look and be sure about it.

A. It is dated the 24th.

(Counsel for complainant moves to strike out that question and take the answer of the witness.)

Q. Look at those two letters and see which date it is.

A. The messenger got back in the morning.

Q. I want you to look at the dates carefully of these two letters.

A. It was on the 25th that I saw it.

Q. Which letter did you see first on the 25th?

A. I saw this letter on the 25th.

Q. Which letter is it? Name it.

A. Wilson's letter to Miner.

Q. State whether you know that was in answer to any communication or not.

(Objected to by counsel for complainant on the ground that the paper itself is the best evidence of what it contains, and whether it is in answer to a letter or demand or not, and that it is immaterial and irrelevant coming from Wilson, who is not shown to be the agent of the complainant in any respect.)

A. That is in answer to a communication sent to him on the 24th.

Q. By whom?

(Objected to by counsel for complainant on the grounds
700 above stated, that the letter itself shows from whom it came.)

A. The letter was sent by Mr. Miner.

Q. I will ask you if you had any conversation with Mr. Wilson in regard to this letter; if so, state the conversation.

(Objected to by counsel for complainant on the ground that the statements of Wilson are incompetent as evidence in this case, and are immaterial and irrelevant; that it is not shown that Wilson is the agent or in any way authorized to speak for the plaintiff in this action, and it does not appear that the statements were made in the presence of any authorized agent of plaintiff.)

A. I did. In conversation with Mr. Wilson about the mine I told him that I thought he had a nice mine up there. He said yes, he thought so, and admitted writing this letter denying us admission. That is all the conversation I had.

Q. About what time was that conversation, and the place of it?

A. That was in Darwin on last Thursday forenoon, just before I was starting home.

Mr. MINER: I now offer that letter in evidence.

(The letter is marked "Respondent's Exhibit D," and is as follows:)

"R. S. Miner, Esq.

"DEAR SIR: In reply to yours of the 24th I will state that I am here and in full possession of this mine, and also that I am
701 here on my 'own business' and for my 'own interests,' and also that the Southern Development Company could not hire me to come here for them, as I ignore any right which they may claim to this mine, as they have, in my opinion, abandoned it. However, I am fully aware that the ownership of the mine lays between me and the R. R. Co., and also that nobody has got any right or title to the mine or claims any, excepting myself and the said Co., and I suppose it's them and me for it.

"Now, 'my friend,' I have my own ideas about 'this business,' and my own interests also to look after, and I don't want any advice. I am here to prevent any and all persons from entering upon the said mine or premises for any purpose whatever, and neither talk nor money will buy or influence me in any way. I am here 'to stay' by the proposition, and don't intend to have any surveys made at the present time.

"In conclusion I would say that it's 'no use' coming here to talk about the matter and explain, because I have told you more in this note than I first intended, and 'I mean it.'

"Yours truly, JOHN WILSON."

(Objected to by counsel for complainant on the ground that the evidence is incompetent, immaterial, and irrelevant; that the state-

ments of Wilson are incompetent for or against the plaintiff in this action, he not being the agent or authorized to speak for the plaintiff; that the letter itself contains no statement of facts
702 relevant to this issue, and that it contains opinions, conclusions, and denials wholly irrelevant to the issue between the parties.)

Q. Now, what time in June did you visit the mine? State with whom you went, if anybody, the first time in June.

A. The 3rd day of June, in company with Mr. Silva and Mr. Miner.

Q. How long have you been a surveyor?

A. I commenced surveying first in California in 1859, in Tuolumne county.

703 Q. State what experience you have had in that business of surveying lands and mines or anything else.

A. I have been surveying lands and mines more or less that have come in my way ever since, off and on, whenever I had business at it.

Q. Have you ever made any underground surveys of mines?

A. I have.

Q. Did you make a survey of this mine?

A. I did.

Q. When?

A. I commenced on the 7th day of November, 1884.

Q. Did you complete it in that time?

A. I completed it the next morning before daylight—the morning of the 8th.

Q. I want the month and year that you finished it in.

A. The 8th of November, 1884—the first survey.

Q. Did you make another survey of that mine or any portion of it?

A. A partial survey.

Q. At what time?

A. I made that on June 30, 1886.

Q. Did you draw any map representing those surveys?

A. I did.

Q. Produce the map if you have it.

A. This is it (producing map).

Q. I will ask you if this map now produced by you represents the surveys made by you of the Stirling mine on the occasions referred to?

A. It does.

704 Q. Is it a correct survey and representation of the portions of the mine represented on the map?

A. It is.

Mr. MINER: I will offer this map in evidence.

Mr. REDDY: We object to the introduction of the map until counsel have an opportunity to cross-examine as to its correctness.

Mr. MINER: You can cross-examine him upon it now.

Mr. REDDY: I appreciate your offer, but I will do it when my time comes.

Mr. MINER: I will withdraw the offer of the map unless counsel cross-examines at this stage.

Q. What does this represent on the map marked "main tunnel to turn-table, 186 feet?"

A. This represents a tunnel driven into the mine. A small dot out here represents the instrument station. The distance from that to the centre of the turn-table is 186 feet.

Q. What is that point marked on the map?

A. "Instrument station, 3 feet 6 inches from the end of ore chute."

Q. Are the other matters represented on this map represented here from actual measurements and surveys made by you on the occasions of your visits referred to?

A. They are.

Q. What are the different writings on these representations? Explain for what purpose they are put there.

705 (Objected to by counsel for complainant on the ground that the writing ought to be self-explanatory, and that the writing ought not to be supplemented.)

A. They indicate the course and distance.

Q. Please pay particular attention to the question.

A. They are put there for the purpose of indicating the courses and distances that were run and drafted on that map.

Q. I will ask you if there are any other marks placed on that map for other purposes than those you have mentioned?

A. There are.

Q. Who placed those various words and marks and sentences on that map?

A. I did.

Q. Now, state the various purposes for which you placed them there, the purposes other than those you have mentioned.

A. Those colored spots marked "croppings" are there to indicate the croppings of the lead—these colored marks down here.

Q. Name what those places are; just say generally what the red-colored marks are for.

A. To indicate where we found ledge matter and ore in the tunnels, drifts, and upraises.

Q. Do those red marks and lines on the map substantially represent the place where you found ore and ledge matter in that mine?

A. They do.

Mr. MINER: We now offer this map in evidence.

(Map marked "Respondent's Exhibit E.")

706 (Objected to by counsel for complainant on the ground that counsel has not yet cross-examined as to its correctness, and on the further ground that what purports to be a map contains statements of facts as to the existence of ore, its width and dimensions, which do not belong to a map, and the map is being used

as a means of getting in statements in writing as to facts which should be taken in the usual way of obtaining testimony; for instance, at the point marked "39-foot level," it contains a statement as to what is contained in the ore chamber in the way of waste and ore, and the map contains memoranda which would prevent a thorough cross-examination of the witness, as by reference to the map he finds his testimony on the subject, with the particular point already written down, and he might as well write his whole testimony down in his note book and then read it from his note book as to have it written on the map; that there are erasures on the map not accounted for; a part of the map seems to be written in lead pencil and another part with ink.)

Q. Now, commence at the mouth of the main tunnel and describe that map as concisely as you can, and designate the different portions of the survey and of the map, so that it can be understood what you refer to.

A. The turn-table in the main tunnel is drawn at a distance of 100 feet 3 inches.

Q. Is that designated on the map; if so, how?

707 A. By these lines.

Q. How are those lines marked?

A. By courses and distances.

Q. Is it not marked here in some way so that a person can designate it?

A. On the roof of the tunnel——

Q. One moment. I ask you how is that northwesterly cross-drift from the main tunnel marked on this map?

(Objected to by counsel for complainant on the ground that the map ought to show for itself how it is marked.)

A. The course from here to there is 88 degrees 45 minutes.

Q. I am not asking you that. I asked you how it is marked on that map; is it marked "A, B, C" or "1, 2, 3, 4, 5," or how is it marked on that map?

(Counsel for complainant makes the same objection.)

A. "Cross-drift, 100 feet 3 inches."

Q. What do these lines represent marked "from centre of turn-table to end 272 feet N. 30½ E?"

(Objected to by counsel for complainant on the ground that the map shows, and it is written there, what it is intended to represent, and the map having been introduced the witness cannot contradict what is there stated, it being in writing.)

(Counsel for respondent moves that the costs of these useless objections be taxed to the complainant in this case, respondent's question not being directed to what these words represent at all,

708 but to what those lines represent which are marked in that way.)

(Counsel for complainant moves that counsel for respondent's uncomplimentary speech to a brother attorney be charged to him, and

that before he constitutes himself judge he should wait for an appointment or election to that position.)

A. A continuation of the main tunnel into the mountain.

Q. What is the length of that continuation from the turn-table to the space at the end of it?

A. 272 feet.

Q. I will ask you if there is anything on that map which represents the turn-table referred to by you? If so, point it out.

A. This small dot where the instrument was set in the ground.

Mr. MINER: I should like to mark that point.

Mr. REDDY: I object to any mark being placed on the map.

Mr. MINER: I will designate the spot as referred to by the witness, being the black spot in the centre of the tunnel where the cross-drift crosses the tunnel.

Mr. REDDY: I object to counsel taking the place of the witness. Let the witness describe the map. Counsel's place is to put questions, and not to make statements of facts.

Mr. MINER:

Q. State at what point in that map this turn-table is situated.

A. It is situated at the point 186 feet from the instrument
709 station, in the centre of the main tunnel; also in the centre of the cross-drift, running north and south, both ways; both cross-drifts start from the north and south.

Q. I will ask you what is represented by the lines marked "cross-drifts to winze No. 1;" what do those lines represent?

(Objected to by counsel for complainant on the ground that it is there written by the witness what it indicates.)

A. The lines of the tunnel?

Q. Yes; that is what I am asking for. What do they represent?

A. They represent the cross-drift.

Q. Which cross-drift?

A. Running south from the turn-table.

Q. Now please look at that map and see if that is south.

A. From the centre of turn-table to the centre of winze No. 1 the bearing is south 58 degrees east 59 feet.

Q. 59 feet from what point to what point?

A. From the point to the centre of turn-table to the centre of winze No. 1.

Q. From the point marked winze No. 1 what do those lines represent which are marked "to winze No. 2?"

A. The bearing from the centre of winze No. 1 up to winze No. 2 is south 45 degrees east 28 feet; to the back end of the tunnel of the drift, 46 feet; clear back to there.

Q. To the end of those lines it is 46 feet?

A. Yes, sir.

Q. Now I will ask you if this winze No. 1 is represented on the map?

A. Yes, sir.

Q. How is it marked?

710 A. It is marked "winze No. 1, 83 feet deep."

Q. Is it marked "83 feet?"

A. 84 feet. This is marked "84."

Q. What is the depth of that?

A. 84 feet.

Q. Is winze No. 2 marked on that map?

A. It is.

Q. What is the depth of that?

A. 83 feet.

Q. Did you take the measurements of all these places that you have designated?

A. I did.

Q. Are they correct?

A. They are.

Q. I will ask you what these lines represent at the left of the map marked "sleeping-room tunnel"—the red lines?

A. They represent an inclined tunnel.

Q. What is the length of that inclined tunnel?

A. 41 feet.

Q. Did you measure that?

A. I did.

Q. I will ask you what is represented by this figure on the map marked "Edwards tunnel?"

A. That red coloring marks where a shaft has been sunk.

Q. What is the end figure marked "Edwards tunnel?"

A. It is a short inclined tunnel.

Q. What is the depth of it?

A. 21 feet.

Q. I will ask you what the red portion in that figure represents?

A. It is a shaft sunk there and filled up.

Q. Do you know of your own knowledge who sunk it?

A. No; I do not.

Q. I will ask you what is represented by the colored spots marked "croppings" on this map?

711 A. They represent the ledge where it crops out of the ground.

Q. What does this figure represent, marked "inclined tunnel," between the main tunnel and winze No. 1, as represented on the map?

A. It is an inclined tunnel, starting from the cropping on the surface and running down.

Q. Describe it.

A. The length is 41 feet; the side drift running off here in a southwesterly direction is 24 feet.

Q. Describe the balance of it.

A. Here it makes a connection and opens into this side drift from the upraise and runs in a northwesterly direction.

Q. This upraise marked "stope" on the map; what is the distance from the tunnel up to the top of the upraise?

A. 29 feet.

Q. Did you give the distance of the side drift from the stope connecting with the 34-foot side drift?

A. 16 feet.

Q. Does that stope connect with the cross-drift from the main tunnel?

A. It does; it connects at a point, winze No. 1.

Q. Above or below, or how?

A. At the roof of the tunnel.

Q. Opposite to winze No. 1?

A. Yes, sir.

Q. What do these lines represent here marked "39-foot level?"

A. They represent a drift run from winze No. 1 to winze No. 2.

Q. What is the length of that drift?

712 Mr. REDDY: I will ask whether the witness is testifying from memory.

The WITNESS: I am reading from my original notes.

Mr. REDDY: That is so with reference to all these statements about distances and what was to be seen at each point?

The WITNESS: Yes; from my original notes made at the time.

Mr. MINER:

Q. Are you depending entirely on that book or do you use that book to refresh your memory as to these facts?

A. To refresh my memory.

Q. Are those figures and distances correct, as stated in that book?

A. They are.

Q. Were they made at the time of your survey?

A. Yes, sir.

Q. They are the original field notes of these surveys which are represented on this map?

A. They are.

Q. Made by yourself?

A. Yes, sir.

Q. Now, what is the distance of that 39-foot level from winze No. 1 to winze No. 2?

A. 51 feet.

Q. What is this red mark going down with two black lines around it from the 39-foot level, marked "Modoc winze?"

A. It is a small winze sunk there.

Q. What is the depth of it?

A. I have not got the depth of it.

Q. If you will look at the back of your book you will find the notes of it.

A. It is 11 feet six inches.

713 Q. In depth?

A. Yes, sir.

Q. Describe the other dimensions of it.

A. It is 6 feet long by 11 feet deep.

Q. What is the width of it?

A. It is between 3 and 4 feet.

Q. I will ask you what this figure represents on the right, at about midway down winze No. 2, as represented on the map in red and other colors?

A. This indicates the ore chamber.

Q. On what level?

A. Below the 39-foot level.

Q. Does that represent the ore chamber at the time of your visit and survey of the mine?

A. It does; at the time of my visit on the 7th of November, 1884.

Q. I will ask you what this figure off to the right represents.

A. It represents the ore chamber as I found it on the 7th of June, 1886.

Mr. MINER: With the permission of the examiner I will mark this "A."

Mr. REDDY: I object to any marks being put there by counsel. The witness must mark the map if he is a surveyor.

Mr. MINER:

Q. Designate some mark there, so that we can understand what you are talking about.

A. I have marked it "A."

Q. What does this point marked "A" represent?

A. It represents the ore chamber as I found it on the 7th day of June, 1886.

714 Q. Now, I will ask what this figure represents marked "point of location," on the lower right hand corner of the map.

A. It represents a small, short tunnel and a shallow shaft.

Q. Did you examine this mine with a view of ascertaining whether it contained any ore or not during your visits?

A. I did.

Q. Do you know anything about mining?

A. I flatter myself I do.

Q. State what experience you have had in mining and in different kinds of ores.

A. I have been engaged in mining for lead for the last two years—very nearly that.

Q. At what place?

A. White Hill, Inyo county, California.

Q. Commence at the beginning and give us a short, succinct account of your mining experience.

A. My first mine was a placer mine.

Q. At what time?

A. In the fall of 1852. I followed placer, river, and gulch mining until 1858.

(Recess to two o'clock p. m.)

715 *Afternoon Session.*

JOHN ALEXANDER recalled for further direct examination.

Mr. MINER:

Q. Since 1858 have you done other mining up to the present time, outside of the lead mining you have spoken of?

A. I mined a little in gold quartz in Tuolumne county in the latter part of 1859 and the commencement of 1859.

Q. Have you lived much of the time since 1858 in mining countries?

A. A good deal of the time; yes.

Q. Are you familiar with lead ores?

A. Yes, sir.

Q. Where have you worked in lead ores in the last two years?

A. At the White Hill mine, Inyo county.

Q. Do you now own your mine, or is it the mine of some other person?

A. I was interested in it.

Q. State on what scale you worked that mine—whether you worked any ore from it or shipped any ore.

A. Yes; we shipped a number of car-loads from that mine.

Q. I will now ask you if you saw any ore in the Stirling mine during your two visits, on June 2nd and June 7, 1886.

A. I did.

Q. State at what points in that mine you saw that ore.

A. I saw ore in the north drift; I saw ore in the southeast cross-drift, and I saw ore in the ore chamber.

716 Q. On what level is the ore chamber?

A. The 56-foot level; the ore chamber below the 39-foot level, and I saw ore in the cross-drift, running from winze No. 1 to winze No. 2.

Q. What is that cross-drift called?

A. The 39-foot level.

Q. State what other points you saw ore at.

A. My previous visit, in 1884.

Q. Never mind about the 1884 visit. I will ask you if in either of these last two visits you saw ore in this inclined tunnel which you testify to.

A. I did. I saw ore in the upraise, opposite winze No. 1, right at this place, in the roof.

Q. What is that marked; what upraise is that?

A. It is marked "stope, 29 feet up."

Q. I will ask you if you visited the point designated on the map as the point of location during either of these last two visits.

A. I visited it at the last visit.

Q. Did you see any ore at that point?

A. I saw ore in the croppings.

Q. Where were those croppings situated with reference to the figure on the map marked "point of location?"

A. Just a little bit north of it, and west.

Q. Does the figure marked "A" on the map represent any other portion of the mine besides the ore chamber?

A. It represents a portion of winze No. 2, coming down.

Q. On which side of the ore chamber does it come down?

717 A. On the southwest side.

Q. Did you measure the side of the ore chamber at the time of your visit, in 1884?

A. I did.

Q. What was the size of it? Give such measurements, if any, as you took at that time.

A. It was nine feet across at one end of the chamber and nineteen feet long.

Q. Nine feet across between what two points?

A. The widest portion, near where the little shaft is sunk, in the southeast end.

Q. At the first visit, what place did you measure for the nine feet?

A. Right across here.

Q. Does that measurement include the width of the winze?

A. No, sir.

Q. Then from what point did you measure—to what side of the chamber?

A. I measured from the ladder across to the southeast wall.

Q. From what ladder?

A. The ladder that goes down the winze.

Q. Winze No. 2?

A. Yes, sir.

Q. And the nineteen feet in length, was that the extreme length of the chamber?

A. That was the longest opening; yes.

Q. I will ask you if you constructed a model showing a portion of this mine?

A. I did.

Q. Look at this model and see if that is the one which

718 you constructed?

A. This is the model I constructed.

Q. Is that model constructed according to any scale?

A. Yes, sir.

Q. Is it constructed in accordance with the survey that you made at any time?

A. It is constructed from the same notes that that map was constructed from and on the same scale.

Q. What is the scale of this map?

A. 10 feet to the inch.

Mr. MINER: I offer the model in evidence as representing, substantially, portions of this mine which have been surveyed by the witness.

(Model marked "Respondent's Exhibit F.")

Q. What does this upright piece marked "No. 1" represent?

A. Winze No. 1.

Q. What does this upright piece marked "No. 2" represent?
A. Winze No. 2.
Q. What does this, running round between those two winzes marked "No. 3," represent?
A. The 39-foot level.
Q. What does this piece fastened on the bottom, marked "No. 4," represent?
A. The lower level.
Q. What level; what is it called?
A. I never gave it any other name than the "lower level."
Q. Has it not been designated here as some level; what is the depth of it?
A. The 84-foot level, connecting with winzes Nos. 1 and 2.
Q. What is this winze here?
719 A. Bottom of winze No. 2, 83-foot level, which is the level connecting the bottom of those two winzes.
Q. At about what depth?
A. Connected with one at the 84-foot level and with the other at the 83-foot level.
Q. What does that little slat marked "No. 5," at the bottom, represent?
A. No. 5 is intended to represent a drift running underneath winze No. 2.
Q. What does this little piece of wood, near the bottom of winze No. 1, on the model marked "No. 6," represent?
A. It is a small cross-cut that will run in there.
Q. In what direction does that run from the bottom of winze No. 1?
A. It runs at right angles with this; it runs right square back.
Q. Right angles with what—with the 83-foot level?
A. Yes, sir.
Q. It runs in what direction?
A. Southwest by west.
Q. What does this pasteboard figure on the model marked "No. 7" represent?
A. It represents the mountain cut away, where the ledge slopes down.
Q. Does it represent any inclined tunnel?
A. Yes, sir.
Q. From what point, from the surface?
A. From the croppings.
Q. On the surface, running down to what point?
A. Running down 41 feet on the stope.
Q. What does the whole thing represent?
720 A. It runs down 41 feet and runs off to a side drift and connects with a stope up from the first cross-drift south.
Q. The cross-drift south from the main tunnel?
A. Yes, sir.
Q. What do these little red sticks represent in the lid of the 39-foot level in the model?
A. Ore and ledge matter.

Q. What do these little red sticks fastened in the chamber on the model represent?

A. Ore and ledge matter.

Q. What does this little hole on the model in the roof of the chamber and the bottom of the 39-foot level represent?

A. An opening made from the ore chamber up into the 39-foot level.

Q. What do the red sticks on the figure 7, pasted on its surface represent?

A. It represents ore and ledge matter on the sides of the drifts and tunnels.

Q. I will ask you if you have any samples of ore which came from that mine.

A. I have, sir.

Q. Please produce them, commencing with your first visit in 1884.

A. Here is a sample of the ore taken from the ore chamber (producing).

Q. Look at the model and tell me what part of the ore chamber it was taken from.

A. It was taken right on the edge of this small shaft that is sunk in the southeast end of the ore chamber.

721 Q. Out of which side of this little excavation did this come?

A. On the northeast side of this little excavation in the ore chamber.

Mr. MINER: I now offer this in evidence as being a sample of the ore in that portion of the ore chamber.

(Specimen marked "Respondent's Exhibit G.")

Q. At the point from which this ore was taken did you take any measurements of the ore at that place?

A. I estimated it.

Q. I do not mean now to get the quantity of ore that was there, but did you measure the width or size of any ore body near that point in the northeast corner of that chamber?

A. I measured as accurately as I could, and the body showed there from 12 to 15 inches in width at the point we took this particular piece from.

Q. Have you any other samples from that mine which were taken during your visit in 1884?

A. I have two small samples here that I gouged out of the roof. There is a sample I took out of the roof on the 39-foot level (producing specimen).

(Specimen offered in evidence and marked "Respondent's Exhibit H.")

Q. Have you any more?

A. There is a sample that I took out of the roof at the northwest end of the ore chamber overhead.

722 (Specimen offered in evidence and marked Respondent's Exhibit I.")

Q. Designate according to the model what place that came from.
A. Right here in the roof.
Q. Are those all the samples that you took during your visit in 1884?
A. Those are all the samples.
Q. Have you any samples which you took which came from that mine in 1886?
A. I have, sir.
Q. Please produce them.
A. Here is a sample of ore as I took it from the ore chamber on June 3, 1886.
Q. From what part of the chamber did you take this sample?
A. It came off this body of ore right at the southeast side of the little drift in the southeast end of the chamber.
Q. From the same place that Exhibit G came from?
A. Yes; from the same place.

(Specimen offered in evidence by counsel for respondent and marked "Respondent's Exhibit J.")

Q. So that we may understand this model and the corner designated, please point out how the north and south line would go through the ore chamber as represented on the model.
A. It passes through like that.
Q. Then what corner would this be; this is north?
A. The southeast corner.
Q. And this?
A. Northeast side.
Q. This sample, Exhibit J, came from the northeast side of
723 the chamber.
A. The northeast side of the chamber and the southeast end.
Q. Did it come from a place near this little excavation?
A. Right on the edge of it.
Q. What is this little hole in the middle of the ore chamber represented here—a little square hole?
A. It represents a shaft four feet deep.
Q. I will ask you what this slip of paper represents on the model running from the ore chamber down to the lower level?
A. It represents a little winze that runs from the ore chamber down and connects with No. 4.
Mr. MINER: I ask the examiner to mark that piece of paper.
Mr. REDDY: I object to any mark being put upon it after it has been put in evidence.

Mr. MINER:

Q. During your visit, in June of this year, at the time this Exhibit J was taken from that chamber, what was the width at the point from which you took that sample?
A. As near as I could measure it, between 12 and 15 inches.
Q. Did you leave much ore in place there at the time you left that mine?

A. I did, sir.

Q. Have you any more samples taken during your visit in June?

A. I have a sample here.

Q. Where does that come from?

724 A. From the northwest end of the ore chamber and about half way up to the 39-foot level.

(Specimen offered in evidence by counsel for respondent and marked "Respondent's Exhibit K.")

Q. Have you any more samples?

A. Yes, sir.

Q. Please produce them. Where did you get them from?

A. These are companion samples, taken from the 29-foot upraise in No. 7. They came right out of the roof, opposite winze No. 1, in the upraise No. 7 on the model.

(Specimen offered in evidence by counsel for respondent and marked "Respondent's Exhibit L.")

Q. Now, in that upraise from which Exhibit L was taken, describe the extent of the body of ore of which that is a sample that you took there on your visit on June 3, 1886?

A. Around the edge of the upraise here it has been stoped out and shows a body of ore all the way round an average width of about a foot.

Q. How wide was that upraise at its point of connection with the cross-drift up to winze No. 1?

A. It has two mouths.

Q. Take the mouth opposite to winze No. 1?

A. About four or five feet.

Q. Is there any ore in the hanging wall of that upraise?

A. Yes, sir.

Q. How thick is that ore?

A Right where it starts up it is about two feet.

Q. How far up does that ore extend in that upraise?

A. As far as the opening shows. This is ore all the way

725 up.

Q. Has it another mouth, and where is the other mouth, with reference to winze No. 1?

A. The other mouth is three or four feet north, along the line of the south drift, northwest. There is just a little partition between the two openings.

Q. Is that opening designated on the map?

A. No; it is not.

Q. Is it designated on the model?

A. No, sir.

Q. I will ask you if there is ore in that second mouth which you have just mentioned?

A. There is a small streak running up to the side drift.

Q. Do the samples put in here in connection with your evidence

fairly represent the kind and quality of ore that is in that mine today or was in that mine during your visit in June, 1886?

A. At the points at which they were taken?

Q. Yes, sir.

A. Yes, sir.

Q. Who was present at the time all these samples were removed?

A. Those that I took in 1884?

Q. Yes, sir.

A. There was Mr. Miner, Mr. Silva, and Mr. Anthony.

Q. What is Anthony's first name?

A. Charles Anthony.

Q. Was Silva, the defendant in this action, present?

A. Yes, sir.

Q. Who was present in June, 1886, at the time you took the samples offered in evidence?

726 A. Mr. Miner and Mr. Silva.

Q. I will ask you if there was ore in that chamber, on the northeast side, at the time of your visit in June, 1886.

A. Yes, sir.

Q. How far up did that ore extend in height from the bottom of the chamber? Describe it so that any person who did not see this model could tell what you are talking about.

A. The ore shown in the bottom, at the edge of this small shaft, and then run right up the northeast side, extending up into the 39-foot level as far as the opening discloses it.

Q. When it gets up in the 39-foot level does it extend any higher than the 39-foot level?

A. There is ore in the roof of the 39-foot level.

Q. Is it one continuous streak of ore from the bottom of the chamber up into the roof of the 39-foot level?

A. It is, sir.

Q. Did you examine that ore body which you have just described for the purpose of determining its pitch, dip, or inclination?

A. No; I did not particularly.

Q. Do you know what the pitch of the ore in the ore chamber is—the ore that was in the northeast side of the ore chamber at the time of your visit in June, 1886?

A. I did not measure its dip.

Q. What is the course of it?

A. It pitches to the northeast.

727 Q. From what you could see could you discern it sufficiently to say whether the pitch it had in the ore chamber and in the 39-foot level—keeping up that same angle—whether it would extend northeast and north of the 82 or 83 foot level?

A. So far as the ledge is exposed the dip of it would carry it out and over the No. 4 level to the northeast.

Q. You mean the level marked No. 4 on the model?

A. Yes, sir.

Q. I will ask you if there were any other works in that mine in the lower level besides those designated on this model?

A. Yes; there is a shaft sunk.
Q. At what point on the model?
A. At the point where there is a connection made between No. 5 and No. 4 on the model; this dark spot here.
Q. I will ask you to mark that point with some figure.
A. I will mark it "No. 10."
Q. Now mark this scrap of paper something.
A. I will mark that "No. 11."
Q. That shows the upraise from the 83-foot level to the ore chamber?
A. Yes, sir.
Q. There is a little shaft sunk at this point, marked "10" on the model?
A. Yes, sir.
Q. Outside of those works as represented are there any other works in that neighborhood in that mine?
A. Not that I found.
Q. I will ask you if you examined the 83-foot level in
727½ place for the purpose of seeing whether there was any ore in it?
A. I did, sir.
Q. Did you find any ore in any part of it?
A. I did not.
Q. Did you examine the level near the bottom of winze No. 1?
A. I did, sir.
Q. Did you find any ore in that?
A. I found none.
Q. What was the size of the ore chamber at your visit of June 3, 1886?
A. Across the ore chamber, by ladder, 17 feet.
Q. By "by ladder" do you mean through the ladder in winze No. 1?
A. Yes, sir.
Q. Through that ladder, from side to side of the chamber?
A. In winze No. 2, from side to side of the chamber, including the width of the winze.
Q. How much?
A. 17 feet; across the little drift at the southeast end of the chamber, 13 feet 8 inches.
Q. What do you mean by "little drift?"
A. A little shaft.
Q. That would be, then, across the southeast end of the chamber?
A. Yes, sir.
Q. How much?
A. 13 feet 8 inches.
Q. What was the length of the chamber?
A. 21 feet the longest way.
Q. What was the height?
A. The height of the chamber opening up to the 39-foot level, 18 feet from the floor of the chamber.

728 Q. I will ask you if the figure marked "A" on that map represents substantially the ore chamber on your visit of June 3, 1886?

A. As near as may be.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive and is indefinite and uncertain, and asks the examiner to read the question to the witness.)

(The examiner reads the question.)

Mr. MINER: I will withdraw that question and put it in another shape.

Mr. REDDY: I do not want it withdrawn. I want an answer to it.

A. As near as I could represent it.

Mr. MINER:

Q. Had your chamber been enlarged since your visit of 1884?

A. Yes, sir.

Q. Up to the time of your visit in June, 1886?

A. Yes, sir; it had.

Q. State what parts of it had been enlarged.

A. On the northeast side here. It has been enlarged there and dug away some in the southwest corner in the southeast end.

Q. What did the ore chamber measure in your last visit, from the latter to the northeast side, in the same points, about where you measured it in 1884 and stated it measured nine feet?

A. It measured 11 feet.

729 Q. Above that point where it measured 9 feet in 1884, had the chamber been widened out higher up than that point, going toward the roof?

A. Yes; it had.

Q. About how much has been taken out since your former visit on the north and northeast side of that chamber?

A. There has been considerable, but I had no means of determining what the difference was.

Q. Have you any idea how many inches or feet?

A. Two or three feet, at least.

Q. Is the ore still there at this point where the chamber had been enlarged?

A. It is; it shows on the northeast side, running up like that, of which this is a very fair representation.

Q. Did you measure the outside surface of this mine? Did you survey it?

A. I took the bearings of three of the corner posts.

Q. About how does the mine run in its length?

A. It runs northwest and southeast in its greatest length.

Q. I will ask you if there is anything upon this map to designate northeast; if so, state what it is.

A. An arrow.

Q. What is it marked?

A. It is marked "N" at one end.

Q. And "S" at the other?
A. Yes, sir.
Q. Now, I see another arrow on this map. What does this represent?
A. It is the magnetic variation.
Q. What is the magnetic variation?
A. About 16 degrees.
Q. Which way?
A. East.

730 Q. Did you at any time take the course or dip of the ore body which you mentioned as being in the ore chamber on your visit in 1884, with an instrument?

Q. I took an observation of the bearing of the ore chamber, but not of the ledge.
Q. What was it?
A. North 20 degrees east.
Q. Do you mean the length of the chamber?
A. The opening.
Q. I will ask you what this red stain is at the figure marked "A" on the map. What does it represent?
A. That represents the ledge running along on the northeast side of the ore chamber.
Q. What does this red represent down here on the other side of the figure?
A. That represents an ore streak crossing that little shaft and entering the wall on the southwest side,
Q. As it appeared on your visit when?
A. As it appeared on my visit in 1886.
Q. I will ask you who removed Exhibit G, being the sample taken in 1884 on your visit, from the point designated by you in the ore chamber? Who removed it from there, and how was it removed and given to you?
A. It was knocked loose by Mr. Silva.
Q. With what?
A. With a chunk of scantling—a piece of scantling. It was given to me. I stood by and saw it knocked loose.

731 Cross-examination by Mr. REDDY:

Q. You say that you are a surveyor?
A. Yes, sir.
Q. By profession?
A. Yes, sir.
Q. And that you first commenced to survey in 1852?
A. That was the first work I did in California.
Q. Had you studied surveying?
A. I have studied it at school.
Q. Where?
A. In the States.
Q. In what school?

(Objected to by counsel for respondent as immaterial and irrelevant.)

A. In the school where I got the balance of what little education I got.

Q. At what school was it?

A. I was instructed by a teacher hired by my father, in a country school.

Q. In a country school you learned surveying, practically?

A. I learned the theory of it.

Q. In what State?

A. Iowa.

Q. What year or years?

A. It is so long ago I have almost forgotten.

Q. I am sorry to trouble you, but I would like to know.

A. I was about sixteen or seventeen years old.

Q. I do not know how long that is ago.

A. I am fifty-seven now.

Q. Cannot you tell what year you went to school in Iowa?

A. I think it was in 1847.

732 Q. You learned surveying all in that year?

A. Yes, sir.

(Counsel for respondent objects to this examination and moves the court to tax the costs of such questions to the complainant in this action on the ground that they are immaterial, irrelevant, and incompetent; whether the witness knew anything about it years ago does not cut any figure if this map and model are correct, and it is immaterial whether he understands surveying or not. If counsel can show these things are wrong he can do it.)

Q. Can you tell in what year you studied surveying?

A. I think it was 1847.

Q. Did you do it all in that year?

A. Yes; it is not much of a job to learn surveying.

Q. All the study you ever did in surveying was in 1847?

A. I studied the theory of it, and I studied it ever since when I had any business.

Q. You did not practice surveying in school; you simply studied the theory?

A. I studied the theory of it in school.

Q. You never attempted to make any survey until 1859?

A. I commenced about 1859.

Q. All the study you had was in 1847 and you commenced to make surveys in 1859, if I understand you right?

A. Yes, sir.

Q. In what capacity did you begin surveying in 1859; with whom did you make the surveys?

A. I was appointed county surveyor of Tuolumne county.

Q. Appointed?

733 A. Yes, sir; by the board of supervisors.

Q. How long did you serve in that capacity?

A. I served the vacancy out—the balance of the time; about a year.

Q. How long were you in office as county surveyor?

A. I was then elected to the office and filled the office for two years.

Q. What kind of surveying did you do there?

A. I surveyed mines.

Q. Underground?

A. Yes, sir.

Q. What mines did you survey?

A. I surveyed the New York Tunnel Company and the Table Mountain Tunnel Company's mine.

Q. You surveyed those in order to be a witness on behalf of one or other of the litigants?

A. I surveyed them, as county surveyor, for both of the party litigants to the suit.

Q. Was there any other surveyor with you in that work?

A. When I made the surveys?

Q. Yes.

A. No.

Q. When did you next do any surveying?

A. I was busily engaged in it during the time I was in office.

Q. How long after you quit that office was it until you did some more surveying?

A. I followed it up when I went out of office up to the time that I left Tuolumne county and came to this side of the mountain, which was about a little over a year.

734 Q. For a little over a year after you left office?

A. Yes, sir.

Q. How many mines did you survey altogether in Tuolumne county?

A. I cannot recollect.

Q. Cannot you name the mines that you surveyed?

A. I could not begin to.

Q. How many underground surveys did you make of mines?

A. I could not tell you.

Q. Did you survey more than two during the time you were in Tuolumne county?

A. Yes, sir.

Q. Name the third underground mine that you surveyed.

A. I surveyed the mines at Soulsbyville.

Q. Name the mines that you surveyed.

(Objected to by counsel for respondent on the ground that the examination is only taking up time and that it is irrelevant and immaterial.)

A. I cannot recollect all the mines and do not propose to try.

Q. The mines that you surveyed for the Table Mountain Company, what amount of surveying was there to be done underground there; anything more than a plain tunnel?

A. Plain tunnel and side drifts. It was a drift mine.

Q. How many drifts were there from the main tunnel?
A. I cannot remember now.
Q. Were there many?
A. Yes; a good many.
Q. Were they all on one level?
A. Yes, sir.
Q. What year did you leave Tuolumne county in?
735 A. I left there in 1864.
Q. When did you next do any surveying?
A. The next job of surveying that I did I did in Aurora.
Q. Of a mine?
A. Yes, sir.
Q. Underground or on top?
A. In company with Mr. Mason, from Virginia, in the suit between the Young America and the Antelope.
Q. Was it underground work?
A. Yes, sir.
Q. What party did you survey for?

(Counsel for respondent objects to all these questions as immaterial, irrelevant, and incompetent, and gives notice that he will move the court to tax the costs of these questions to the complainant.)

A. I surveyed for the Young America.
Q. That was simply a straight tunnel?
A. It was an underground quartz mine.
Q. It was simply a straight tunnel into the hill?
A. There was a shaft.
Q. Was there a tunnel running into the hill?
A. Shafts and drifts off from it.
Q. Did you survey a tunnel first? Did not the Young America claim consist of a straight tunnel into the hill?
A. There was a tunnel there.
Q. Did not you survey that tunnel?
A. I might; I do not remember all the ins and outs now.
Q. Do you not know that they did not have anything but a tunnel in the hill?
A. Yes; we went down a shaft.
736 Q. And one shaft down from the tunnel; is not that all?
A. We made a connection where the two mines connected together. We surveyed the opening where the mines connected together and broke through.
Q. What figure did Mr. Mason cut in that business?
A. He was a surveyor.
Q. What were you doing?
A. I was assisting him.
Q. In what respect; with the chain?
A. I assisted him in making the measurements.
Q. Were both of you acting as surveyors?
A. We both acted as surveyors.
Q. What surveying did you next do? Where did you do your next surveying?

A. My next surveying that I had anything to do with was for Mr. Wilson, and I surveyed the Bodie hill.

Q. What part did Dick Mason perform?

A. He ran the instrument part of the time and I carried the chain; some of the time I ran the instrument.

Q. And Dick carried the chain?

A. No; Dick would be away.

Q. You surveyed for amusement while Dick was away?

A. No; I surveyed for compensation.

Q. Where did you next survey?

A. The next survey I made was in this county.

Q. Where did you make an underground survey in this county outside of the one in question here?

A. This was my first underground survey.

737 Q. Was your surveying in Bodie underground?

A. Some was and some not.

Q. How many years is it since you made the survey next preceding the one in question here.

A. My survey next preceding this was land survey.

Q. How long is it betweon the last underground survey of a mine and the survey in question here? How much time had there been between the two?

A. I do not remember of doing anything since I did the work at Bodie.

Q. How many years ago was that?

A. In the winter of about 1865; along about the holidays.

Q. It is about some twenty-one years since you made an underground survey; is not that so.

A. That is the last survey that I made until I made this, that I remember.

Q. You are a carpenter, are you not?

A. I have worked at the trade; I never learned it.

Q. You learned it about the same as you did surveying?

A. No; I studied surveying.

Q. Are you a blacksmith?

A. No.

Q. Are you a millwright?

(Objected to by counsel for respondent as not being cross-examination and as immaterial, irrelevant, and incompetent.)

A. I have worked at millwrighting business.

Q. Have you run a quartz mill?

A. I run one little mill for a few weeks.

738 Q. How long since?

A. Three or four months ago.

Q. Within the last two years?

A. Within the last year.

Q. How much time did you spend in and about that mill preparing to run it and in running it?

(Objected to by counsel for respondent as not being cross-examination and as immaterial and irrelevant.)

A. I might have spent two or three months.
Q. About how much time did you spend in and about it?
A. I did not keep any note of it.
Q. You have been to San Francisco several times in the last two years?
A. Twice, sir.
Q. How much time did you lose in those trips; how long were you absent from this place?

(Objected to by counsel for respondent as immaterial and irrelevant, and counsel gives notice that he will move the court to tax the costs against the complainant of all these questions and answers.)

A. The first time I went down there——
Q. How much time altogether; lump it up.
A. I probably lost four weeks, all told; three or four weeks.
Q. How much time have you spent at Independence during the last two years?

(Objected to by counsel for respondent on the same grounds as before stated.)

A. Whatever time my business requires me here.
739 Q. I am asking you how long that was?
A. I have not kept any note of it.
Q. Cannot you tell by your board bill or something of that kind how long you have been here?
A. No.
Q. Is there any data from which you could tell us how long you have been in Independence during the last two years?
A. I have been here a good deal of the time. I do not know how much.
Q. Have you been here one-half of your time?
A. No.
Q. One-quarter?
A. Probably.
Q. One-third would be about the right thing?
A. I do not know how it would be.
Q. How much time have you spent at the ranch of Mr. Lang?

(Counsel for respondent objects to all these questions as immaterial and irrelevant.)

A. I do not think it is any business of yours.
Q. How much time have you spent at Lone Pine during the last two years?

(Objected to by counsel for respondent on the same ground.)

A. I have probably been there two or three times; three or four times, perhaps; stayed all one night once or twice.
Q. How much time did those trips take?
A. I stayed over night once or twice.
Q. Have you spent any time up at the Poleta mine and at Bishop Creek during the last two years?

A. I suppose I was at the Poleta mine half an hour once. I never was there but once.

Q. How much time have you spent at Bishop Creek?

740 A. Once or twice three or four days.

Q. How long have you been absent from the county in the two last years altogether?

A. Just what time I went to San Francisco and back, and no more.

Q. How much time have you occupied in political matters during the last two years which would keep you from work?

(Objected to by counsel for respondent as immaterial, irrelevant, and incompetent.)

A. I have not bothered my head about politics.

Q. Have you done any carpentering work in the last two years?

A. No.

Q. None at all?

A. No.

Q. Where have you resided most of the time during the last two years? In what particular house have you lived the better part of your time during the last two years?

(Objected to by counsel for respondent as immaterial, irrelevant, and incompetent and not in cross-examination. The only legitimate subject of cross-examination is how and in what manner the witness was engaged in working lead mines.)

Mr. REDDY: I object to the counsel informing the witness the object of his cross-examination.

Mr. MINER: I am putting my grounds down for objecting. As far as the two years' work is concerned, I asked the witness nothing about the other work he was in during the last two years, except working in lead mines and making this survey.

741 Mr. REDDY. I except to counsel informing his witness of the object of cross-examination.

The WITNESS: The better portion of my time I spent at the mine at White Hill in the last two years,

Mr. REDDY: I ask you in what house had you lived in the Owens Valley during the last two years?

(Objected to by counsel for respondent as immaterial, irrelevant and incompetent.)

A. I boarded and lodged at the Blaney House.

Q. Can you not ascertain from there how much time you have spent there?

A. If I saw proper to go to the trouble I might get the amount of money I paid from the books.

Q. Could you not ascertain from that house the length of time that you spent there in the last two years?

A. No.

Q. Will you do it?

A. I will not, unless the court orders me.

Q. Do you refuse to do it?

A. If the court orders me to do it I will obey the mandate of the court.

Q. Not otherwise?

A. Not otherwise.

Q. How much time did you spend in and about the suit of the State of California against Frank Silva? How much time were you away from your White Hill mine during that period?

(Objected to by counsel for respondent as immaterial and irrelevant.)

A. I think there were about four weeks spent in that other trial making the survey.

742 Q. Do you know how long the trial lasted and how long you were at court waiting on it?

A. I think the whole time from the time I started to go down to the mine and made the survey, got back, made the map and model, and attended here something in the neighborhood of four weeks. I do not remember exactly.

Q. In November, 1884, you made the survey?

A. During the month of November.

Q. How long did it take you to make it? How long were you gone on that trip from the time you started from here?

A. 5 or 6 days.

Q. Were you not away from your White Hill mine from the time you started to make that survey until the trial was over?

A. Yes.

Q. Will you tell me from your best judgment the length of time that you were engaged in that?

A. In the neighborhood of four weeks, I think.

Q. And how much time have you spent upon it in this year?

A. I have spent no time in this year, except these two trips down there.

Q. How much time?

A. The first time we were gone six or seven days, and the last trip down there I started from here on Monday night and got back the following Thursday week on the cars, making about ten days.

Q. Have you been to the White Hill mine since?

A. I am not interested in it now.

Q. When were you last at the White Hill mine?

743 A. About two months ago. I sold out of the White Hill mine about two months ago.

Q. When did you do the last day's work in that mine, if ever you did a day's work in it?

A. Somewhere about the 24th or 25th of April.

Q. 1886?

A. Yes, sir.

Q. What work did you do there then?

A. I was driving a drill.

Q. Driving a drill?

A. Yes, and running up the windlass, hoisting, sacking ore, and weighing it.

Q. When did you do your first day's work on the White Hill mine?

A. I discovered the White Hill mine on the 18th day of September, 1884.

Q. I asked you when you did your first day's work on the White Hill mine?

A. That was when I done it.

Q. Did you continue straight on, and for how long?

A. I worked at that mine from that time on until somewhere about the 1st of November, 1884—the 1st or 5th, somewhere along there. I quit work on the White Hill mine in order to go out and make this survey.

Q. When did you return to the mine?

A. As soon as I was through with this lawsuit.

Q. When?

A. I think after we got our trail completed, somewhere along about the first part of January, 1885; then we returned to the mine.

744 Q. How long did you remain at the mine at work on that occasion?

A. I remained and worked steadily at work until the following July, excepting when I came, off and on, back on business.

Q. How long were you off on business during that period?

A. I came down to get a little bill of grub and go back.

Q. I asked you how long you were absent, not what you came for.

A. It took me a day to come and a day to go back.

Q. How often did you come?

A. Once in two or three months.

Q. Up to July, 1885, all the work you did was from some time in September, 1884, up until about the 1st of November; that was the first period of work. Then you worked from January until July, 1885; is that correct?

A. I worked from January up to about the 1st of July.

Q. Did you quit work and leave the mine then?

A. Yes; I hired a man in my place.

Q. How long did things continue in that way; how long did you remain away from the mine and keep a man in your place?

A. I had men hired steadily in the mine from that time on up until some time in February, I think it was.

Q. 1886?

A. Yes.

Q. What happened then?

A. The mine was not paying enough to justify me hiring any one and I went back to it myself.

Q. When did you go back to work?

A. Some time in March, after I got back from San Francisco.

745 Q. About the middle of March?

A. I do not remember exactly.

Q. Is not that your best jndgment—that you were away until about the 20th of March?

A. I could not say exactly.

Q. Is that your impression?

A. Somewhere about the middle of March.
Q. How long did you continue to work then?
A. Until between the 20th and 25th of April.
Q. Making in the neighborhood of a month that you worked on that occasion?
A. Yes, sir.
Q. When you sold out, and have done nothing since?
A. I have not worked at the mine.
Q. That is the limit of your experience in lead mining?
A. I had been engaged in lead mining for nearly a year before that.
Q. Where?
A. I had another mine below the Eclipse mine.
Q. How much time did you work there?
A. I worked there several months and took out a shipment of about sixteen tons of ore.
Q. You were there long enough to do that?
A. Yes.
Q. With the assistance of whom?
A. Thomas Keogh was with me, and then there were two Cornishmen helping us to take out the second shipment of two tons and a half.
Q. How many weeks or months did you work altogether on that claim which you have just mentioned?
746 A. I do not know.
Q. Would it exceed four weeks' work altogether?
A. Yes, sir.
Q. Would it exceed two months' work altogether?
A. Yes; we worked there prospecting three or four or five months.
Q. I am talking about working in the mine. How many weeks or months did you work in that mine?
A. We worked and prospected in that mine four or five months.
Q. Separate the prospecting and tell me how long you worked?
A. It was all worked.
Q. How long did you work in the regular course of mining?
A. I was sinking and drifting along.
Q. Is that the limit of your actual work in lead mines?
A. Yes; that is about it. I prospected more than that. I have been engaged for about two years.
Q. I simply ask you if that is the extent of your actual labor in lead mines?
A. When I was not working I had it done.
Q. I am not asking you about what you had done. If your experience comes that way, that is another proposition. I apprehend the work of other men would not afford you much experience as a miner. What was the character of the White Hill mine; was it a galena mine?
A. Yes, sir.
Q. Differing from the ores which you have produced here, is it not?
A. Yes; it does not look like this one.
Q. Yours occurred in the shape of cube galena, did it not?
747 (Objected to by counsel for respondent on the ground that it is immaterial, irrelevant, and not in cross-examination.)

A. There was cube galena in it.
Q. That was the principal production, was it not?
A. And fine-grade galena.
Q. That is cube, only finer. What was the other mine that you worked in; did not that produce galena only? Was not that the product of the mine?
A. The other mine was the same class of ore.
Q. The same character of the White Hill mine?
A. Yes, sir.
Q. To what depth had you sunk on the White Hill mine?
A. About 85 feet.
Q. That is as deep as you ever mined in lead?
A. Yes, sir.
Q. What was the depth attained in the other mine you worked in?
A. The deepest part was about eighteen feet.
Q. You have worked in mines according to your account about 13 months altogether?
A. I have done actual work with my own hands probably about that time.
Q. Most of the time that you spent on these mines was spent in assorting ore and sacking it and providing for shipping it from the mine to the railroad?
A. Most of my time was spent in driving the drill and with the pick.
Q. How did you work; single handed or double?
A. Single and double both.
Q. The extent of your mining in the White Hill mine
748 would be, from first to last, about eighty-five feet?
A. That is as deep as it has been.
Q. And drifting how much; what lengths of drifts are there from the shaft?
A. I never made any measurement.
Q. Are there any drifts from the shaft?
A. Yes; forty or fifty, maybe sixty feet.
Q. A great portion of that work was done by other persons than yourself?
A. Part of it was done by Mr. Barnes, and Mr. Keogh my partner,
Q. Did you wrestle with the windlass part of the time?
A. Yes; I wrestled with the windlass.
Q. About how much of the time were you employed at the windlass?
A. Whenever it was necessary to pull up a bucket of dirt I did it.
Q. When you were there you pulled out all the dirt?
A. Whenever it was necessary; sometimes the other boys happened to be more convenient and they did it.
Q. I understood you to say you took out all the dirt that was necessary?
A. You did not understand anything of the kind.
Q. I simply ask you the question if you did most of the windlass work that was done while you were there?
A. Yes; I did that.

Q. You are more of an expert on windlassing than you are on the practical working of a mine—about sinking shafts and
749 driving drifts—your experience has been greater?

A. No; my experience has been greater driving drills.

Q. Did you learn much about mines while you were windlassing? Did it enable you to judge ores and to become a practical miner?

A. I learned that it was very hard work.

Q. Generally the men who does not know much about mining and who is not very useful in the face is put upon the windlass, is he not?

A. Not necessarily.

Q. Was that the reason why the windlass fell to your lot?

A. No.

Q. Who worked with you?

A. Mr. Barnes.

Q. What kind of work did you do at the other mine while you were engaged there? Did you manipulate the windlass at that point?

A. There was no windlass to do.

Q. Any wheeling to do or carring?

A. Picking and shoveling.

Q. Was there any wheeling to do with wheelbarrows?

A. No.

Q. Any car work?

A. No.

Q. Did not you go deep enough to require either windlass, car, or wheelbarrow?

A. No.

Q. You worked along the crop at the surface?

A. Yes; until the ore gave out.

Q. You did not go deep enough to require a windlass?

A. No.

Q. That is the limit of your mining experience in lead?

A. Yes, sir.

Q. Are you quite familiar with lead ores?

750 A. No; I cannot say that I am.

Q. Do you know galena when you see it always?

A. I know it the same as I know wheat from corn.

Q. You do not know what it is composed of or anything of that kind? You do not pretend to be a metallurgist?

A. Not at all.

Q. As to the value of ores you do not pretend to know that by looking at them?

A. I do not know anything about them.

Q. When you speak of ore what do you mean by it?

A. A substance carrying metal.

Q. Do you call every substance ore that carries metal?

A. That would be my understanding of it.

Q. Would you call a lead-pencil ore?

A. No; that is not in its native state.

Q. I ask you if whether you would call everything that carries metal ore?

A. Not under your interpretation of it. That which we dig out of the ground and carries metal.

Q. Any rock which contains metal and which you dig out of the ground you call ore?

A. Yes, sir.

Q. Without regard to its value in the market?

A. Without regard to its value in the market or the character of metal it contains.

Q. When you speak of ore you mean any rock in a lead mine which contains any trace of lead; you would call that ore?

A. Yes, sir.

Q. In a silver mine, whatever contains a trace of silver, you
751 would call ore?

A. I would call that silver ore.

Q. You would call it ore if it contained any of the metal which was being mined for?

A. Yes, sir.

Q. Without regard to the value of the particular piece?

A. Without regard to its value at all.

Q. And that is the sense in which you use the term "ore" as I understand it?

A. I do not know anything about the value of the ores.

Q. Is that the sense in which you have spoken of ores here—that is to say, when you believe that it carries a trace or more of lead, if speaking of lead ores, why, you would call that ore?

A. Yes, sir.

Q. When you speak of an ore body what do you mean?

A. The ore in place.

Q. Without regard to size?

A. Without regard to size.

Q. Any piece of ore which you find in place you would regard as an ore body, without regard to its size?

A. That might be small or large.

Q. When you speak of an ore streak do you mean that it shall be of any particular size in order to be called "streak?"

A. No.

Q. However thin?

A. However thin.

Q. It would be an ore streak, in your judgment?

A. It would be an ore streak, in my judgment.

Q. No matter what its length or thickness, it would be an ore streak if there was a tracing of ore from one point to another; is that your meaning?

A. That is my idea.

752 Q. So long as there is a continuous tracing of ore it would be a streak, without regard to its shape, size, thickness, or length?

A. My answer is it is an ore streak.

Q. Can you distinguish between lead ore and iron ore?

A. Only by their looks.

Q. Can you distinguish between lead ore and iron ore by their looks?

A. I can just the same as I can distinguish between corn and wheat—by handling them.

Q. Will you undertake, upon looking and examining with your eye and hand a given piece of rock, to tell whether that contains lead or not?

A. Not for a moral certainty.

Q. I am asking you the plain question in a practical sense: Can you determine whether a given piece of rock contains lead or not by looking at it or handling it?

A. Just in the same way that I can tell the difference between corn and wheat.

Q. I simply ask you if you can tell the difference between iron rock and lead ore?

A. Yes; they do not look alike at all.

Q. Have you not met with in your mining experience a rock which to all appearances is an iron rock, but which, yet on assay, will give a large percentage of lead?

A. I have never worked anything of that kind and do not know.

Q. Are you familiar with iron ore that is generally associated with lead mines?

A. Not to any great extent.

753 Q. Is it not the fact that there are iron ores in the Stirling mine?

A. I do not know whether there are or whether there are not.

Q. Did you see any there?

A. I saw a dark-colored ore there. I do not know whether it was iron or not; I am not an assayer, and never saw any of it assayed.

Q. You do not know whether the bulk of the vein rock which you saw in the Stirling mine is lead or iron ore?

A. I do not know what the bulk of it is.

Q. You saw a dark-colored ore there apparently of iron.

A. A mineral stain.

Q. That would have to be determined by an assayer?

A. I am not an assayer.

Q. Can you, by looking at this piece of ore, Exhibit H, tell whether it is iron or lead?

A. I cannot.

Q. Do you know what it contains?

A. No.

Q. Can you, by looking at Exhibit K, tell me what it is; whether it is iron or lead ore?

A. No.

Q. Will you look at Exhibit I and tell me whether it is lead or iron ore?

A. I cannot tell you, because I am not an assayer; I never used it and do not know.

Q. You do not know what it contains?

A. I do not know what it contains; I do not pretend to.

Q. When you spoke of ore, then——

A. It contains some kind of mineral.

754 Q. Do you know what it contains?

A. No.

Q. You spoke of it as ore, nevertheless?

A. I spoke of it as ore containing mineral.

Q. What kind?

A. I do not know what kind of metal it contains; I never saw it assayed.

Q. Then the fact is you do not know what metals any of these exhibits of rock you have brought here contain?

A. I do not know; I am not a scientific man in that line at all.

Q. Then, if the mining was carried on over there for lead ores, you would not say whether this ore was not in that sense?

A. I would not set any value to it.

Q. You do not know whether it is lead ore or iron ore, as a matter of fact?

A. Not of my own knowledge.

Q. Your experience in mining is not sufficient to enable you to determine between iron rock and lead rock if this be either iron or lead—the exhibits which you have presented here?

A. I could not determine, for I never had them assayed and do not know; that is the only way I can determine what is in rock, by giving it to a competent and professional assayer and letting him assay it for me. When he gives it to me I will take it as a fact.

Q. You would not be a competent mining man in the Stirling mine so as to separate the waste rock from the valuable ores—that is to say, if you were put in there to mine for lead, and

755 there is lead and iron ore there, you would not be able to distinguish the one from the other as you now stand?

A. No.

Q. Is it not necessary for a man who is to break ore in a mine to be able to distinguish the matter which is being sought for from other metals of no value, which are not sought for, and waste?

A. That would be a knowledge that I crave to know very much.

Q. You would not be able to distinguish the iron ore from the lead ore, if both existed in that mine, as you now stand?

A. That would be a knowledge that I crave very much—to know these things intuitively.

Q. I ask you if you possess it.

A. No.

756 Q. Is it not necessary that a man who is put into a mine to break ore should be able to distinguish the ore from that which is not ore, or ore of a different kind and character from that sought for, before he will be regarded as a competent, practical miner?

A. Well, that is more than I can answer.

Q. Your mining experience does not enable you to say whether a miner should be able to determine what might be waste rock from ore? Is that the fact? I mean from other characters of ore not desired.

A. Practical experience is the best guide. I do not know anything about theories.

Q. I do not care about a lecture on what is best. I simply ask you the question whether your mining experience enables you to say whether it is necessary for a man who is to break rock in a mine to be capable of distinguishing the ore sought for from other ores or waste. Does your mining experience enable you to understand that question?

A. Yes; it does.

Q. What do you say?

A. It enables me to distinguish the ore from the country rock, just the same as I can distinguish wheat from corn.

Q. Answer my question. Is it necessary for a person before he is regarded as a competent miner to be able to distinguish between the ore sought for and other ores in the mine not desired and not being mined for?

757 (Objected to by counsel for respondent as immaterial, irrelevant, and incompetent. The witness is not put upon the stand to testify about the practical capacity of miners.)

A. I cannot answer the question until I get a better understanding.

Q. Read the question, Mr. Examiner, to accommodate the witness.

(The examiner reads the question.)

A. Yes; it would have been necessary for a man to be a thoroughly competent miner to be able to distinguish, to a certain extent.

Q. You have not developed up to that standard yet, as a miner?

A. No; and I have never seen a man yet that was.

Q. You are not acquainted, then, with miners much, and are not a judge of their ability?

A. Yes; I am pretty well acquainted with miners. I never knew a miner in my life that was able to do it. I do not care how scientific he was.

Q. Do you mean to say you never saw a miner in your life who was able to distinguish the ore being mined for and sought for in the particular mine from other ores not sought for and which were not regarded as valuable?

A. To an absolute certainty, no.

Q. Practically is it not necessary, and have you not seen lots of men who could go into mines and distinguish the ore being sought for from other ores considered valueless?

758 A. No; I do not know I ever knew a man who could do it.

Q. That is the result of your mining experience?

A. Yes, sir.

Q. Did you make that model?

A. Yes, sir.

Q. Did you make that map?

A. Yes, sir.

Q. Did you do all the coloring on that map?

A. Yes, sir.
Q. When did you make the map?
A. In November, 1884.
Q. You say you made an examination of the mine to determine the quantity of ore in it?
A. I did not.
Q. Did not you say so?
A. Not as you have put it.
Q. Did you say anything of that sort, in substance?
A. No, sir.
Q. You do not deny, now, do you, that you have either stated it or that it is the fact that you ever made an examination with the view of determining the quantity of ore there?
A. I stated the fact that I made an examination with the view of determining whether there was any ore there.
Q. However little? Answer that question.

(Counsel for respondent objects to the question being repeated on the ground that the witness has already answered it.)

Q. I will ask you the question again, and would like to have an answer.
A. Yes; I looked in the mine to see if there was any ore there, much or little.
Q. Was it not one of your objects in visiting that mine to prove there was some ore there?
A. No, sir.
759 Q. Have you been paid for the work that you did in making this survey, or have you done it voluntarily, as a matter of friendship to any of the parties connected with this suit?
A. That is none of your business; that was my own private business, and none of yours.
Q. I will repeat the question to you again. I will ask you if you were paid for the survey and for visiting that mine by the respondent in this action or by any person concerned with him or by either of the parties to the suit, or whether you did all of this work voluntarily and as an act of friendship to any of the parties connected with the suit?
A. I shall decline to answer the question.
Mr. MINER: You can answer generally whether you did the work for nothing or whether you were paid for it.

Mr. REDDY: I object to counsel instructing the witness how to answer. He can instruct him that he must answer, but not how.

A. I have not been paid.
Q. I would like a full answer to my question.
A. I expect to be paid.
Q. Answer the question; whether you have done it as an act of friendship; by whom you expect to be paid.
A. By Mr. Silva.

Q. What do you expect to receive; is it contingent upon the success of this suit, or have you a contract with him for a greater sum of money, fixed and settled between you?

760 A. There is no contract for a given sum of money, and it is not contingent upon the success of this suit; but he is to pay me for my services.

Q. What are you to receive?

A. That is a matter between Mr. Silva and myself.

Q. I ask you what you are to receive; whether you are to receive money; and, if so, whether you have the amount fixed or any agreement as to the amount?

A. I am to receive money, and there is no agreement as to the amount, further morethan I am to be paid a reasonable and fair compensation for my time and services.

Q. Do you expect to get your pay, and have you any agreement to get your pay until the determination of this suit?

A. I expect to get my pay from Mr. Silva whenever he gets the money to pay me.

Q. Is it not the contract that you are to wait until the determination of this suit and until Frank Silva and his counsel shall receive payment on a certain certificate of deposit for the sum of seventy-five hundred dollars?

A. No, sir.

Q. Did you ever have such a contract?

A. No, sir.

Q. You completed the first survey and all the work in November, 1884, did you not?

A. Yes, sir.

Q. And you have never received any payment; is this the fact?

A. I never have.

Q. You say that the sticks on the 39-foot level represent ore and ledge matter, do you not?

A. Yes; that is what this indicates.

761 Q. I will ask you if you can distinguish the ore from the vein matter in this ledge.

A. It is all mixed together.

Q. I ask you a simple question: Are you able to distinguish ore from vein matter in that ledge?

A. I can distinguish what I call ore.

Q. I ask you if you are able to distinguish between the ore indidicated on the 39-foot level and what you call ledge matter.

A. I can distinguish the difference between what I call ledge matter and what I call ore.

Q. What do you call ledge matter?

A. Anything that is in the ledge, in a gangue—that is, carried in the ledge, not containing mineral.

Q. Are you able to determine whether vein matter—that is to say, that which is found between the country rock in that opening, vein, lode, or whatever it may be called—does or does not contain valuable minerals?

A. No; I do not think I am.

Q. Can you tell whether any of the matter which you have designated there in the roof as ore and vein matter contains valuable metal or not?

A. No; I do not profess to be able to tell.

Q. You do not know whether it was valuable ore or not which you have indicated on your model?

A. I do not pretend to say at all.

Q. You give the same answer with reference to your ability in regard to No. 7 and all the region you have spoken of and referred to on that model?

762 A. The same answer would hold for all.

Q. You cannot tell what is ore and what is not ore?

A. What is valuable ore and what is not?

Q. That which is valueless ore is waste in mining, is it not?

A. It is called waste.

Q. You cannot tell waste from ore, can you, anywhere in that mine?

A. Not in all cases.

Q. Can you in any case; if in one case, why cannot you tell in all cases?

A. Because ores have such different characteristics.

Q. And you do not know any of the characteristics of the ore in that mine—that is to say, you cannot tell whether the characteristics belong to the vein matter or the ore?

A. I do not pretend to be able to tell you.

Q. You do not pretend to tell anything about that?

A. No, sir.

Q. Then when you come to indicate ore on that 39-foot level by your marks and when you come to speak about ore in the ore chamber and at other points in the mine, it has been pointed out to you by other persons who claimed to be judges of the ores and you simply made a survey to indicate what they thought about it; is not that so?

A. I surveyed it to find out the size of this ledge matter and ore streak.

Q. And you do not pretend to say that the points you have designated as ore are ore, except what other persons have told you who you presume to be competent judges; is that so?

763 A. I do not pretend to be able to say whether it has any value or not at all.

Q. I am getting at the points you have indicated on your map and on your model—that is what I am talking about—and I ask you if the places which you have said contained ore is your own judgment, or whether it is the judgment of some one else who informed you that ore existed at those points?

A. It was my own judgment. That is what I would put it at.

Q. It was not based upon any one else's judgment?

A. No; it was based on my own conclusion, from my experience.

Q. And the fact is you have really no ability to determine between lead ore and iron ore or other vein matter found in that mine. Is not that the fact?

A. I am not an assayer and not a metallurgist.
Q. And do not know?
A. Consequently I do not know anything about it.

(Recess to to-morrow, Wednesday, June 16, at ten o'clock a. m.)

764 WEDNESDAY, *June* 16, 1886.

(Counsel and parties met pursuant to adjournment.)

JOHN ALEXANDER recalled for further cross-examination.

Mr. REDDY:

Q. Which is the north side of the model? Will you indicate it?
A. That is the way the north and south line will pass through it (drawing an arrow).
Q. I would like to have it generally designated so that the judge will know. Indicate the north and south line. Draw a north and south line on the bottom board.
A. One hand is intended to represent true north and the other is magnetic.
Q. What is the distance between No. 6 and No. 12 in a direct line—the end of the little piece marked 6 and the end of the little stick marked 12 on the lower level?
A. About 33 feet.
Q. What is the distance from winze No. 1 to winze No. 2 in a direct line on the lower level? Approximate it pretty closely.
A. It is about 60 feet.
Q. What is the distance from winze No. 2 to the 84-foot level?
A. It is about 30 feet.

765 Q. What is the distance from the bottom of the ore chamber down to the 84-foot level, measured on the northeast side of the chamber? I do not mean by way of the little shaft represented by the paper, but taking the northeast side of the ore chamber down to the 84-foot level.
A. About 28 feet.
Q. What is the distance from the bottom of the ore chamber by way of the upraise marked No. 11?
A. I never made any measurement with the tape of that.
Q. You can measure it now, if you please, just to find out as near as may be the distance.
A. I can only approximate it. It is between 35 and 38 feet.
Q. You spoke about the ledge running over the 84-foot level by following its apparent dip in the ore chamber. Do you still say that would be the case?
A. By following its apparent dip where exposed?
Q. Yes, sir.
A. It would carry it over the 84-foot level.
Q. Is it exposed in the ore chamber; are you right?
A. It is exposed in the 39-foot level.

Q. That is not an answer to my question. Is it exposed in the ore chamber?

A. Yes; to some extent.

Q. The ledge is there; it is there, or it is not there.

A. It is there, but it is irregular.

Q. I do not care anything about the eccentricities or irregularities. I simply want to know if it is there. Your answer is yes, it is there.

A. It is there, but irregular.

766 Q. I did not ask you anything about that. As you insist on putting that in, it is all right. It is there; on which side of the chamber?

A. On the northeast side.

Q. And what is the dip—in what direction?

A. Northeast.

Q. It dips to the northeast?

A. Yes, sir.

Q. Then I understand you that in going down on the apparent dip in the ore chamber it would extend northeast and over the 84-foot level?

A. Yes, sir.

Q. What is the apparent dip, or did you take the dip, or could you tell the dip of the ledge in the ore chamber from your last examination, or any examination?

A. I estimated the dip at about 35 degrees.

Q. Now, do you mean to say that in going down 28 feet, at a dip of 35 degrees, the ledge would be thrown 30 feet to the northeast from the ore chamber.

A. It would be dip enough to carry it over the top.

Q. Answer my question. Do you mean to say at a dip of 35 degrees, in going down 28 feet, the ledge would be thrown 30 feet to the northeast? Remember you have stated that the distance from the ore chamber across and over to the 84-foot level is only 28 feet; not the vertical, but on a regular line, an incline from the ore chamber to the 84-foot level. You say the distance is only about 28 feet. Now, do you mean to say that it could go 30 feet to the northeast in going that distance down on that incline?

A. From a vertical line it would only have to pass over about fifteen feet.

Q. Did you not just measure from the shaft from winze No.

767 2 over to the 84-foot level, and did you not give the distance as 30 feet?

A. Mind you, from the northeast side of the ore chamber is 17 feet to be taken off.

Q. Did you not say that the ore vein was in the northeast of the chamber, and that was where it was to be seen?

A. Yes, sir.

Q. Then where does your 17 feet come off?

A. Because the measurement that you asked me about was over here to the winze.

Q. I asked you to measure, and did you not measure, from the side of the winze next to the 84-foot level, and did you not give the

distance across there as 30 feet? However, the court can measure for itself, as far as that is concerned, as I have got your dip and distances, and all that sort of thing. What distance along the incline of the vein in the ore chamber did you see?

A. I saw the face of it.

Q. Will you give me the dip of the northeast wall of the ore chamber as you have fixed it on your model?

A. I have no measurements.

Q. State what, in your judgment, is the angle of the northeast wall of the ore chamber as fixed there by you?

A. The walls of the ore chamber?

Q. I am not asking you about the walls of the ore chamber. Please answer my question direct and straight. Will you state
768 the dip of the northeast wall of the ore chamber as represented on your model?

(Objected to by counsel for respondent on the ground that it is not in cross-examination; that it is misleading; assumes that the model represents correctly the dip of the wall of the ore chamber; that the witness has not testified that the ore chamber as represented on the model, or the wall of it, is an exact representation of the true dip of the ore chamber or of its ledge.)

A. The wall, as represented in the model, is simply there for the purpose of illustrating that there is a wall and not to give its dip.

Q. That is not answering my question. What is that dip as indicated there?

A. I do not know.

Q. I will ask you if you are unable to state or form any judgment as to the dip of that wall as there represented?

A. Only approximately.

Q. I will ask you to give your judgment so that I may measure it afterwards and see whether your judgment is good or bad.

A. It might be seventy-five or eighty degrees.

Q. Then your model was not intended to represent the dip of the ledge at any point?

A. No, sir.

Q. And you do not know what the dip of the ledge was?

A. I never made any measurements for the dip.

Q. I ask you if you know. Answer the question. I want to find out whether you know or not.

A. Not for certain.

769 Q. Do you know—yes or no?

(Counsel for respondent objects to the question on the ground that the witness has already answered and it is a repetition of the same question.)

A. I do not know for certain.

Q. What is called on that model the ore chamber, does it represent the form or shape of the ore chamber or what is to be seen therein?

A. It does not exactly represent the form and shape of the ore chamber.

Q. It was simply for the purpose of illustration, not to make a perfect model of the ore chamber; is that it?

A. That is it.

Q. You have certain red sticks on the northeast side of the ore chamber. What do those sticks represent?

A. They represent the line of the ore body and ledge matter, as shown on the northeast side.

Q. When were those sticks put there?

A. At the time that I made the model, in 1884.

Q. Did you visit the chamber since that time?

A. I visited the chamber in June, 1886.

Q. Did you find it in the same condition in June, 1886, that you found it in November, 1884?

A. No, sir.

Q. Was there any ore on that side, as you have represented it there, in June, 1886?

Q. Yes, sir.

Q. Was the ore in just the same position as it was in 1884,
770 and undisturbed?

A. As near as may be.

Q. You recognized no material difference?

A. No, sir.

Q. Did you examine the ground above the 39-foot level, about where you represent ore and vein matter along the roof?

A. I examined it just the same as I did the first time; I examined the roof.

Q. I asked you if you examined the ground above where you represent ore in the roof of the 39-foot level.

A. I examined the roof.

Q. I asked you did you go on any other level. Did you examine the ground anywhere between that point and the surface above that 39-foot level?

(No answer.)

Q. I ask you a plain, straight question. Did you you examine the ground above the 39-foot level—that is to say, between the roof of the 39-foot level and the surface at any point?

A. No; I did not; it is not open.

Q. You could not?

A. It is not open.

Q. Is it not open on the tunnel level, on the 39-foot level?

A. I examined the roof of the tunnel.

Q. Read the question, Mr. Examiner.

(The examiner reads the question.)

A. No, sir.

Mr. MINER: I desire to ask a question.

Mr. REDDY: I object to counsel asking any question at this time.

771 Mr. MINER: Mr. Alexander, please pay attention to the questions that are asked you and do not answer them until you understand them; when you understand them, answer.

Mr. REDDY:

Q. Have you examined the ground between the 39-foot level and the surface immediately over the 39-foot level?

A. I have not.

Q. At no point between the points named?

A. It is not open so that I could examine it.

Q. Is there not an opening from the main tunnel level out to the surface?

A. Not that I know of.

Q. What do you represent there by No. 7 on the map on the main level? Is not that an opening above the tunnel level?

A. This is the 39-foot level, and that is an opening which goes to top.

Q. Is not that partly over the 39-foot level?

A. No, sir.

Q. No part of it?

A. No part of it.

Q. What — this ore extending on from No. 7?

A. The south cross-cut that runs over to the 39-foot level.

Q. Is not that open?

A. This part contained openings, but does not extend as far southeast so as to reach over there.

Q. Did you examine in winze No. 2 from the 39-foot level up to the tunnel level?

A. I did.

Q. Did you find that the ore and vein matter, as you term it, exposed in the 39-foot level extended from the 39-foot level up through winze No. 2 to the level above?

772 A. It does not.

Q. Did you examine any in winze No. 1 from the 39-foot level up to the next main tunnel above?

A. I found no ore in it.

Q. You simply found what you supposed to be ore and vein matter along the 39-foot level, but in the winze at each end of that level you found no ore extending. Is that the fact?

A. Yes, sir.

Q. Below the 39-foot level you found vein matter and ore, as you designated, going down to the 55-foot level and into the ore chamber?

A. From the 39-foot level down to the floor of the ore chamber I found ore.

Q. Any vein matter?

A. And vein matter.

Q. When you speak of ore you speak of it at a guess, as you have heretofore stated?

A. I speak of it as I understand ore.

Q. I understand you to say that the red in figure "A" on the map represents ore and vein matter?

A. It represents ore and vein matter.

Q. It completely covers that side, as represented there by your "A?"

A. It is a streak of ore that appears right in the face of the northeast corner.

Q. I desire to have my question answered. I ask you now if the vein on the northeast side of the figure marked "A" on the map represents ore?

A. It does, sir.

773 Q. Then, as it appears in that figure, the whole northeast side is covered with ore, for it is all red?

A. No, sir.

Q. Is it not all red on the northeast side of the ore chamber, as represented there?

A. No; it is intended just to represent a streak of ore.

Q. It is simply a streak?

A. Yes, sir.

Q. How big a streak?

A. At the southeast end of it, down by the little shaft, it is from 12 to 15 inches. It increases in size, and when it gets up to the northeast end and in the top of the ore chamber, in the face, it is about 3 feet or a little over.

Q. What do you call it?

A. I call it three feet full.

Q. What is the material?

A. Ore and ledge matter; such as the samples I show you.

Q. All like the samples; is all that three feet like the samples you have shown here as coming from the ore chamber?

A. Yes, sir.

Q. Will you swear that positively?

A. As near as I am able to judge.

Q. I ask you if you swear positively to that, as positively as you can where you rely upon sight or feeling in any case?

A. According to my best judgment.

Q. Who told you that that was ore and vein matter?

A. I judge it for myself.

Q. Was there any other kind of rock in the vicinity at-

774 tached to this that you call ore and vein matter?

A. It is encased in lime rock.

Q. Encased in lime rock?

A. Yes; above and below.

Q. How do you know it is encased?

A. The lime rock shows in the face.

Q. Does the lime rock show on either side?

A. On both sides.

Q. Do you know whether there had been any ore attached to that lime rock before, and appearing just as that vein matter now appears, simply adhering to the lime rock?

A. I do not know anything about it.

Q. Do you know whether that rock is simply attached and frozen to the lime face or whether it enters into the lime and is encased?

A. I cannot look into the ground.

Q. Answer my question; do you know or not?

A. As far as I broke into it, it still continued in.

Q. I simply ask you now if you know as a fact whether that rock is simply adhering and frozen to the lime or whether it enters into the lime and is encased therein?

A. It enters into the lime.

Q. I ask you now whether it is simply adhering and frozen to the lime. Do you know whether it is or not? Answer my question, yes or no.

(Counsel for respondent objects to the question being repeated over and over to the witness. The witness has answered it to the best of his ability that he broke into it, and as far as he broke into it, it enters into the lime. He has repeated that it did enter into the lime; and counsel for respondent objects to counsel for complainant asking the witness to answer the question yes or no when it cannot be answered yes or no.)

775 A. It enters into the lime.

Q. Answer the question "yes" or "no."

A. I cannot answer the question.

Q. Cannot you state whether you know the fact or not? If you do know it you can say so; if you do not know it you can say so. It is a simple question of knowledge.

Mr. MINER: State how you know it.

Mr. REDDY: I want to know if he knows or not. If he knows I will find out how he knows. I insist that counsel shall not interrupt the witness. I ask that counsel's words be taken down by the examiner.

Mr. MINER: I am perfectly willing that all I say shall be taken down. I am here to protect my witness and see that he explains his answer and make himself intelligible, so that the court may understand the evidence.

A. It entered into the lime.

Mr. REDDY: I desire an answer to my question whether you know or not, because I want to lay the foundation for impeaching you on this question, if I can, so that I may have an answer that I may deal with if you do not answer fairly.

A. I cannot answer the question, for I do not know how.

Q. Mr. Alexander, you have done considerable talking about this case in the county, have you not, first and last, particularly before and at the time of the trial of the case of The People of the State of California against Frank Silva on a charge of having obtained the purchase price of this mine under false and fraudulent representations?

776 A. I have talked to some about it.

Q. You have been a partisan, have you not—that is, you

have talked in favor of Silva, have you not, from the time you first commenced talking about the case?

A. Yes, for I believe Mr. Silva was right.

Q. Your reasons I care nothing about. You assisted materially in forming public opinion in this county, did you not, on that question by your talk and action in the matter?

(Objected to by counsel for respondent on the ground that the question is irrelevant, immaterial, and incompetent and not in cross-examination. There is no evidence that there is any public opinion in this county on this matter whatever, nor does it tend to prove any of the issues in this case whether there is any public sentiment existing in this county or not, nor should the fact that there is a public opinion in the county cut any figure in the decision of this suit.)

A. I do not know that anything I might have said would have any weight whatever in forming public opinion.

Q. You did the best you could, however, in the matter of forming an opinion in the community here favorable to Silva?

(Objected to by counsel for respondent on the same ground as before stated.)

A. No, sir; I made no effort to form public opinion.

Q. Have you not on various occasions made speeches—that is to say, entered into lengthy conversations with citizens of this county and argued to them that Silva was right, and brought forth
777 various arguments for the purpose of convincing them?

(Objected to by counsel for respondent on the ground that the question is irrelevant, immaterial, and incompetent, and on the further ground that if it is sought for the purpose of impeaching the witness the time, place, circumstances, and conversations must be related, together with the persons present, so that the witness may have an opportunity to be placed on his guard and to meet such insinuations or defend himself and explain the conversation.)

A. Whenever I have expressed my opinions they have been my honest convictions of right.

Q. I have not asked you about the honesty of your purpose whatever. I leave that to yourself. I ask you to answer my question.

A. I have never held arguments with persons with the view of convincing them that Mr. Silva was right. I never sought in any way to form public opinion in the matter. Whenever I have spoken of the case at all I have spoken of it as any other citizen would speak of, and give my views of what I thought was fair, right, and just in the matter.

(Counsel for respondent moves to strike out the answer of the witness as immaterial, irrelevant, and incompetent, not having anything to do with the issues in this case; that the defendant does not desire to try the case on public opinion, sentiment, or anything else.)

Q. I will ask you if you have not frequently entered into arguments and argued that the plaintiff in this action was wrong; that it had no business to prosecute Mr. Silva for the reason
778 that it is a rich company, and that it bought this mine and ought not to complain that it got the worst of it?

(Objected to by counsel for respondent for the reasons before given, and on the further ground that the time, place, and circumstances of the alleged conversation have not been stated, nor the parties present at the conversation have not been stated, and further that it is irrelevant, immaterial, and incompetent.)

A. I do not remember having made such statements.

Q. May you not have done so?

(Objected to by counsel for respondent on the same grounds as to the preceding question.)

A. I may have, but I do not remember.

Q. Then the condition of your mind was such as to permit you to make such arguments, was it not?

(Objected to by counsel for respondent on the same grounds.)

A. No; it is not.

Q. Have you not argued to various people in the town of Independence that the plaintiff in this action, The Southern Development Company, was wrong in prosecuting Silva, and that it should not complain that Silva got the best of them?

(Objected to by counsel for respondent on the ground that it is immaterial and on the same grounds as stated before.)

A. I may have stated that I thought the Southern Development Company was wrong in prosecuting Silva; I think so still.

Q. Have you not always, from the time you first heard of the difficulty, taken that ground?

779 A. I have always thought so.

Q. Before you visited the mine at all?

A. Ever since I became conversant with it.

Q. You said a moment ago ever since you first heard of it. I ask you if you did not take that ground and adhere to that ground before you saw that mine?

A. I do not remember that I ever did.

Q. When did you first hear about the difficulty between Silva and the Southern Development Company?

A. At the time he was arrested and brought up here.

Q. How long was it after that until you visited the mine? He was first arrested in May, 1884, was he not?

A. I do not know what time he was arrested.

Q. Do not you know it was in the month of May or June, 1884?

A. I do not.

Q. Do not you know it was many months before you visited the mine?

A. I know it was some months; how many I do not know.

Q. Then, before you visited the mine and after Silva's arrest, you had taken the ground that the Southern Development Company was wrong and ought not to complain if they got the worst of it on the sale? Did you not argue it with the various people right here in the town of Independence long before you visited the mine?

A. Not that I remember.

Q. You may have done so, may you not?

A. I do not remember.

780 Q. You were a witness on the trial of the case of The People of the State of California against Silva, charged with obtaining the purchase price in question in this case from the Southern Development Company by means of false and fraudulent statements?

A. I was.

Q. You presented this same model and map on that trial, did you not?

A. I did.

Q. You stated on that trial, did you not, that you had a vast experience in mining and were familiar with lead ores—could tell them by handling them and looking at them and distinguish them from other vein matter?

(Objected to by counsel for respondent on the ground that the evidence during that trial was taken down in writing by a short-hand reporter, and before questioning this witness in regard to that testimony the writing should first be shown to the witness and the question then asked him whether or not he made such statements and he be allowed to explain the same. In this case the writing has not been shown to the witness, but he is asked if he did not make such and such statements without having shown him the writings purporting to be his evidence in that case, and on the further ground that the question is immaterial, irrelevant, and incompetent.)

(Counsel for the complainant desires to state that counsel is mistaken in saying that the testimony was taken in writing, unless he means to include short-hand. It was taken down in short-hand.)

A. I did not make any such statement.

781 Q. Have you not been an open and avowed enemy of Mr. H. M. Yerington, the president of the Southern Development Company and of the Carson and Colorado Railroad Company?

A. I am not.

Q. Have you not repeatedly denounced him and denounced his company for having made any question with Mr. Silva about the honesty of this transaction?

A. I have time and again said that I thought Mr. Yerington was wrong.

Q. Have you not expressed strong feeling against him for his action in this matter and against his company?

A. Not to my knowledge.

Q. Have you not frequently denounced Mr. Yerington and his company for having made any question with Mr. Silva about this matter?

(Objected to by counsel for respondent on the ground that it does not appear what is meant by denouncing and that no time has been given or circumstances or parties present at the time of said denouncing, whatever the denouncing may mean.)

A. I have never denounced them in anger or enmity.

Q. Have you not been a warm personal friend of Silva during this litigation and before?

A. I am a friend of Mr. Silva.

Mr. REDDY: I now offer in evidence the affidavit of W. A. Harris filed in the superior court of the county of Inyo, State of California, in the case of The People of the State of California against
782 Frank Silva, defendant, in connection with a statement filed in the same court and in the same cause which purports to have been signed by the witness, John Alexander, and also the judgment of the court upon the matter referred to in the affidavit and statement.

(It is admitted that the papers referred to are portions of the files of the superior court of Inyo county, and that one is an affidavit of W. A. Harris and the other a statement of John Alexander, the witness.)

Mr. REDDY: I now offer the affidavit of W. A. Harris.

Mr. MINER: I object to the introduction of this affidavit on the ground that it is immaterial, irrelevant, and incompetent, not tending to prove any of the issues in this case, not being embraced within the issues, and not being in cross-examination, and this is an attempt to bring in a portion of the evidence which belongs to the complainant's case on cross-examination of defendant's witness.

Mr. REDDY: I willnow read the affidavit (reading):

"In the Superior Court of the County of Inyo, State of California.

"THE PEOPLE OF THE STATE OF CALIFORNIA, Pl'ff,

vs.

FRANK SILVA, Def't.

783 "STATE OF CALIFORNIA, } ss:
County of Inyo, }

"W. A. Harris, being duly sworn, deposes and says:

"My name is W. A. Harris; my occupation at present is shorthand reporter in this cause. I know Benj. Theban, one of the jurors impanneled to try this cause, and now sitting as a juror in this case. I know John Alexander, who was sworn as a witness for the defendant upon the trial of this cause. This morning at the breakfast table in the dining-room in the Blaney House, in the town of Independence, Inyo county, Cal., I was present at a conversation engaged in by the said John Alexander, the said Benj. Theban, and Mr. William Pascoe. The following is the conversation referred to: I remarked to Mr. Alexander that he would have another siege to-day. He replied by saying, I guess so. That was all I said at the table.

Mr. Pascoe remarked, using the expression the immortal Flanigan. Mr. Alexander said that he did not hear the testimony of Mr. Flanigan, but that he believed he told the truth. Mr. Theban said, Yes; I believe that he told the truth. Mr. Alexander said that he did not propose to be abused or bulldozed while he was a witness in this case; that a witness had rights while upon the witness stand, and that he knew his rights, and that he intended that he should be treated with courtesy; that he had sworn to tell the truth, and intended
784 to tell the truth, despite the efforts of counsel to make him tell the contrary. That is the substance of the conversation as near as I can recollect, if not the exact words.

"(Signed) W. A. HARRIS.

"Subscribed and sworn to before me this 22nd day of November, A. D. 1884.

"[SEAL.] THOMAS CROUGH,
"*County Clerk*,
"By J. E. PARKER, *Deputy*.

"(Endorsed:) State of California, county of Inyo. People *vs.* Silva. Affidavit of W. A. Harris. Filed November 2, 1884. Thos. Crough, county clerk, by J. E. Parker, deputy."

Mr. REDDY: I now offer the statement of John Alexander.

Mr. MINER: Objected to on the same grounds as to the preceding affidavit.

Mr. REDDY: I will read it (reading):

"*Statement of John Alexander, Def't, in the Matter of Contempt, as Charged.*

"1. I deny that I had any conversation with Benjamin Theban at the breakfast table in the dining-room of the Blaney House on the morning of the 22nd of November, 1884, about the case of The People of the State of California *vs.* Silva. I deny that I rec-
785 ognized him at the table or that I answered any remark made by him.

"2. I admit I had some conversation with Mr. Harris and Mr. Pascoe, but not until they spoke to me first.

"3. I deny that I charged, either directly or by implication, that counsel were trying to make me swear false.

"4. I deny that I, by any act, word, or deed, have committed any contempt.

"5. I deny that any conversation that I had with Mr. Harris and Mr. Pascoe would have any influence on the mind of any juror.

"6. I deny that I have ever, at any time or under any circumstances, in an unlawful manner made any remarks that would have a tendency to influence the mind of any juror.

"(Signed) JOHN ALEXANDER.

"Subscribed and sworn to before me this 29th day of November, 1884.

"[SEAL.] THOMAS CROUGH,
"*County Clerk.*

"(Endorsed:) Filed November 29, 1884. Thomas Crough, clerk."

786 I now desire to offer in evidence the minutes of the superior court of Inyo county on the trial of the case of The People of the State of California against Frank Silver, entreating of the matter referred to in the matter of W. A. Harris and the statement of John Alexander.

(Counsel for the respondent objects to the introduction of the evidence on the ground that it is immaterial, irrelevant, and incompetent.)

Mr. REDDY: I will read: "Benjamin Theban and John Alexander were ordered to appear before the court at two o'clock p. m. and answer for contempt. The court took a recess until two o'clock p. m., at which time it reassembled, the sheriff, clerk, and counsel being present. Upon the filing of an affidavit by himself, John Alexander was purged of contempt. Benjamin Theban was censured by the court and discharged." That is the judgment of the court in that matter.

(Counsel for respondent moves to strike out all the evidence in regard to this contempt business as immaterial, irrelevant, and incompetent and being evidence that belongs to the case of the complainant and cannot be introduced, at any rate, on the cross-examination of this witness.)

Q. I understand you to say, Mr. Alexander, that you have counseled with Mr. Miner, the attorney for the defendant in this case, over at Darwin as to what course should be pursued when you were refused admission by a man by the name of Wilson to the Stirling mine, and that you advised him what to do?

A. I did advise him.

787 Q. You have advised with him upon other matters, have you not?

A. In regard to my surveys.

Q. In regard to matters connected with this suit, its managements, etc.?

A. Only so far as my surveys were concerned.

Q. In taking the samples of the mine did you get any advice from Mr. Silva or Mr. Miner as to where you would be likely to get ore or ore samples?

A. No.

Q. Were you showed to any particular point by Mr. Silva?

A. No; I made my own selections.

Q. Were you conducted by either of those gentlemen, Mr. Miner or Mr. Silva, to the point where the ore was taken out or what you have introduced here as ore?

A. No; we were all together. I was not conducted there by them, but we were all together in examining the mine.

Q. You knew, did you not, that Mr. Silva had done nearly all the work that had been done in the mine and was familiar with the different characters of ore and rock in the mine?

A. I suppose I knew.

Q. Now, did you receive no intimation from him at any time from what place you should take the samples?

A. No.

Q. You were not requested by him to take samples from the ore chamber?

A. No.

Q. At no point?

A. At no time.

Q. Did any one ever request you to take any samples from the mine?

788 A. No; I did it of my own motion.

Q. I ask you if any one ever asked you or requested you to bring samples from the mine?

A. Not that I remember.

Q. At any time, while at the mine surveying, did Mr. Silva suggest to you that you should take any samples; or, if so, from what place or places you should take them?

A. He did not.

Q. Was he looking on at the time you took these samples?

A. Sometimes; yes; sometimes he helped me break them off.

Q. Did he express approval or assent on your action in taking the samples at the particular points at which you did take them?

A. I do not remember he expressed any opinion.

Q. Did he, with you, examine these samples before you brought them here or at any time after you broke them?

A. I believe he did look at them.

Q. Did he express any approval of the samples which you had selected, or did he condemn the samples?

A. I do not remember that he either expressed approval or condemnation.

Q. He was perfectly passive all the way about your taking the samples and gave you no intimation whether you were taking the good ones or bad ones?

A. Not an iota.

Q. You never asked any advice?

A. No.

Q. Notwithstanding the fact that you say you are unable to distinguish vein rock from ore in that mine?

789 A. I took what I considered ore.

Q. Answer my question. Did you or not ask any advice from Mr. Silva or any one else as to the selection of samples in view of the fact that you have stated that you could not distinguish and would not undertake to distinguish ore from vein matter found in that mine?

A. I asked no advice of any one.

Q. Have you been paid for coming here as a witness?
A. I have not.
Q. Do you expect to be paid?
A. I do.
Q. Have you any understanding as to how much you shall be paid?
A. I have not.
Q. Did you ever have?
A. The first work that I done in 1884 my bill was $140.00.
Q. Did you present that bill?
A. I presented the bill, but it has not been paid yet.
Q. Have you ever advanced any sum of money to Mr. Silva for the purpose of carrying on these suits or any of them?
A. I paid part of my own expenses the first time I was out to Darwin making the first survey.
Q. You considered that in the way of an advance?
A. No; I did not.
Q. Or a loan?
A. No; I did not consider it either. I paid it, calculating that my bill would charge my expenses and everything.
Q. You have been paying your own expenses in this matter throughout?
A. Not all the time.
790 Q. Who was it advanced any money to you outside of what you put up yourself; who has paid a dollar for you of all the expenses you have incurred; who, if any one, has paid a single dollar?
A. I do not know who paid the balance of the expenses on the first trip out there; at the last two visits that I paid to Darwin my expenses were paid by Mr. Miner.
Q. That was in June?
A. In June.
Q. What business are you engaged in now, if any?
A. I am not engaged in any business now.
Q. How long have you been out of business?
A. I think I sold out of my mine something like six weeks ago; I do not remember the exact date.
Q. What is the distance from the 39-foot level to the tunnel level; is it 39 feet?
A. 39 feet.
Q. When you say the 39-foot level you mean measured from the tunnel level?
A. Yes.
Q. Are there any works in the tunnel level extending from the last-named level to the surface?
A. No; not that I know of. When you come out to winze No. 1 then there is work which extends from there to the surface.

(Recess until two p. m.)

791 *Afternoon Session.*

JOHN ALEXANDER recalled for further cross-examination:

Mr. REDDY:

Q. You have marked in the ore chamber with certain sticks, reddish in color, up along the northeast side what you call a streak of ore and vein matter?

A. Yes.

Q. Are there any cuts through that vein matter at any place along the line from the northeast corner to the end of the sticks or the streak?

A. There is a little tunnel driven in.

Q. I ask you, if at any point where those sticks on the northeast side are, whether the ore has been cut through or whether that streak is continuous, as represented by those streaks, without any cut being made through?

A. It is continuous, as represented.

Q. Do you mean to say there is no cut anywhere through the ore streak or vein matter, whatever it may be, from the northeast corner up to the end of the streak, as represented by the sticks?

A. There is no cut across the northeast corner.

Q. Will you swear positively that there is a streak on the northeast side of that ore chamber, composed of ore and vein matter, which is continuous from one end of the chamber to the other without having any cuts through it whatever?

A. The ore matter is continuous from the southeast, and it runs clear up here to the northeast corner on the east side,
792 and then there is a little tunnel driven in.

Q. I am speaking now as you have represented it there with the sticks. Does the ore streak or streak of ore and vein matter which you have represented by the sticks stand out from the wall as the sticks do in that ore chamber, as represented in the model?

A. No; they are faced off even with the wall, just as you edge the wall down.

Q. State the length of that ore streak.

A. It is the whole length from the southeast corner clear up here to the northeast corner.

Q. What is the length?

A. As it shows it would be about 24 or 25 feet long.

Q. You say it is composed of ore and vein matter, I believe?

A. Yes.

Q. Why did you not bring some of the vein matter from this mine?

A. I dug this out.

Q. Just answer my question. Why did you not bring some matter along with you which you call ore?

A. I did. It is in those bunches all mixed up together; ore and vein matter together, as it appeared in the ledge.

Q. If you draw a line from the bottom of the ore chamber on the northeast side down to the stick which you say represents the 84-foot level, what would be the angle of that line?

A. I would have to approximate it. I did not take the angle.

Q. Approximate it.

A. About 35 degrees.

Q. If you sink an incline towards the northeast at an angle
793 of 35 degrees, how many feet will it carry you in a distance of 28 feet sinking; how far will it carry you to the north side?

A. 6 or 7 feet. It might be a little more. I cannot tell exactly.

Q. Do you mean to say that the samples which you have put in evidence here fairly represent the vein matter in that ledge as well as the ore?

A. I do.

Q. Is there no other kind of vein matter in that ledge except such as is represented by the samples which you have put in evidence here?

A. I do not know.

Q. Having examined the mine are you able to state whether those samples represent the various kind of vein matter which was exposed in the various openings which you visited?

A. It all looked alike to me.

Q. Ore and vein matter and the whole business looked alike?

A. Yes.

Q. You will pardon me for making reference to any possible infirmities which you may have of sight. I will ask you if your sight is as good as it has been in years passed?

A. Oh, no.

Q. Are you compelled to wear glasses?

A. I am compelled to wear glasses all the time, especially for any close work.

Q. Down in a mine, where you had nothing but candles to work with, you could not observe very accurately the different characters of rock, could you, by candle light, and distinguish between
794 them, even if you had full knowledge of the various classes?

A. Of course I could not distinguish them so well as I could in better light.

Q. Did you have simply a candle to go by, and is not your sight impaired to a degree which prevents you from making that close observation which you could if you were possessed of your full power of sight?

A. I cannot see so well with my glasses now as I could once with my naked eye.

Q. So that you experience some difficulty from weakness of sight in making your examination of the ores?

A. Nothing more than I do in all other things I have to look at.

Q. For instance, in distinguishing between different classes of ore and rock, it requires sometimes the keenest sight, does it not, to distinguish?

A. Yes.

Q. Sometimes the strongest and most powerful glasses are used to enable one to distinguish between th edifferent classes of rock; is not that so?

A. Yes, I find it so.

Q. And now, from what has been said, will you say that you made anything like a close examination of the different characters of rock in the mine?

A. I made as close an examination and took as fair a sample——

Q. (Interrupting.) As your sight and ability and knowledge would permit?

A. Yes.

Q. What I want to get at is your ability in the matter of sight.

795 A. My sight is not as good as it was when I was 25 or 30 years of age. I have to wear glasses.

Q. Of course, we all have to do that.

A. My eyes are dim.

Q. That is what I am getting at.

A. And even my glasses do not restore my sight to the same purity as it was when I was 25 years of age.

Q. When you say it all looked alike to you, a great deal of that probably was from weakness of sight, just as when we begin to first lose our sight or our sight begins to weaken on us in reading the whole passage will blur; did you not experience something like that in looking at this ore mess by the light and by the weakness of your sight?

A. I cannot say that it blurred.

Q. Why do you say that it all looked alike. Are you conscious of the fact that it was all alike from your sight, or what do you attribute that to, why it should all look alike? It is not all alike in point of fact, now that you look at it by daylight?

A. It looked the same to me in the mine as it does in daylight.

Q. Does it all appear to you to be of the same color?

A. It had the same calico color; some darker than others; some spots lighter.

Q. Do all the samples look to you to be of the same color?

A. They look to be just as they appeared to me.

Q. Are they all of the same color?

A. They vary in color.

796 Q. What would you designate the larger samples, what color?

A. I do not know.

Q. Are you color blind?

A. My eyes have never been examined. I do not know whether I am or not.

Q. If you cannot tell the color, to what do you attribute your inability to tell the color?

A. I do not know how to describe it.

Q. You simply say that you are unable to tell what the color is?

A. I cannot tell what the color of it is.

Q. Did you take the samples from the surface of the vein matter?

A. No.

Q. What is the size of the entire vein, the points where you examined, if there was a vein?

A. It varied from a small streak a few inches wide to three or four feet; no regularity of size to it.

Q. Do I understand you right, the ore streak which you described as extending along the northeast wall of the ore chamber made a smooth wall from bottom to top of the ore chamber—comparatively smooth?

A. Comparatively smooth.

Q. Did not project out from the wall?

A. No, sir.

Q. How can you form any judgment whatever of the dip of a stratum, if it was a stratum of ore, when it did not project out from the wall so that you could get the angle of any portion of the streak?

A. By the streak as it showed on the face of the wall, there being white lime above it and white lime below it.

Q. It not projecting, how could you get the angle of that
797 stratum?

A. I merely estimated the angle.

Q. What have you as a basis for making any such estimate? Is it not a sheer guess?

A. It is my judgment?

Q. Is it not guess-work? On what principal of surveying or upon what principal do you start to ascertain the dip of a vein when you cannot see any portion of it except the outer edge or apex?

(Counsel for the respondent objects to the question on the ground that it is a repetition of other questions. The witness has already sufficiently answered it. It assumes a fact that the witness did not testify to, namely, that he could only see the upper edge. The witness has distinctly stated)——

Mr. REDDY (interrupting): I object to counsel citing to the witness what he has stated, as being leading and suggestive to his own witness.

Mr. MINER: The witness has answered the question in full, and has told the counsel in what manner he determined the difference.

Mr. REDDY: He has not done it, in my judgment.

Mr. MINER: He said he saw white lime,

Mr. REDDY: I object to counsel repeating to the witness anything he has said.

A. When you look at a thing it strikes your vision either vertical, horizontal, or at an angle, and if it strikes you at an angle, if it is a great angle, you estimate that the angle is greater; if a
798 smaller angle, smaller. By what rule you do it I do not pretend to say.

Q. I am speaking about impressions that one might receive from looking at anything of that kind, because if such impressions were correct or reliable we would have no use for surveyors. I am

asking you now, as a surveyor, if there is any principle on which you can determine the angle of a vein when you can simply see the upper edge of it or the apex of it, which stands even with the surface on either side. Is there any principle upon which a man can determine the angle?

A. By measurement.

Q. How can you measure through the rock? I say, now, where you have not got that view that I have spoken of; not after you have sunk down or had an opportunity to get the angle for a certain distance, but where you have simply the smooth surface, and you see the upper edge of the vein, is there any principle on which you can determine the angle of that vein without work or doing work to expose it and put an instrument on it? I ask you that as a surveyor.

A. The accurate way to do it is——

Q. I simply ask you if it can be done at all; if you can tell exactly?

A. It can only be approximately.

Q. I ask you if, as a surveyor, you are required to determine the angle of a vein situated in the way I have described, whether you would undertake the job?

A. No; not without actual measurement.

Q. That would involve more work, would it not?

A. Yes.

799 Q. In this case you simply saw this vein in the northeast wall of the ore chamber; the upper edge of it was level with the rock which encased it, if it was encased, as I understand you. Was there any means by which a surveyor could determine the angle of that ledge without doing some work in the rock so as to get a view of the pitch or dip for a certain distance?

A. He could determine it if he had his instruments and lay them right on the face view of the ore streak.

Q. What do you mean by the "face?" I am talking about the edge and not the face.

A. I am talking about the face as it appeared.

Q. I will ask the examiner to read my question, and then ask you for an answer to my question.

(The examiner reads the question.)

(Counsel for respondent objects to the question, as it assumes the witness only saw the edge of the ledge, which is not what he testified to.)

A. If I only saw the edge of the ledge I know of no means to determine its dip.

Q. As I understand you, you made no effort as a surveyor, or as the surveyor ascertains such things, to learn the dip of that ledge which you speak of at that point?

A. I made no measurement.

Q. You may make a mistake of several degrees in estimating the dip of that ledge, may you not?

A. I might.

Q. And you may make so great a mistake as to the dip of that ledge as to carry it, if it extends further down, to the 84-
800 foot level, may you not, as to allow it to go into the 84-foot level, if it continued on that dip?

A. It might be so.

Q. How much money are you out of pocket since you first engaged with Silva as a surveyor and as a witness in this case on account of this matter which has not been refunded to you?

A. In the neighborhood of $20.00; I do not know exactly; I have not kept an exact account of it.

Q. How long a time were you in attendance at the trial of the case of The People of the State of California against Frank Silva?

(Objected to by counsel for respondent on the ground that that was a criminal case; that the State had to furnish the defendant with his witnesses and his evidence; that so far as the expenses of the witnesses in that particular case was concerned it is immaterial and irrelevant and cuts no figure in this case.)

A. I was here during the whole of the trial.

Q. That does not answer my question; Judge Sawyer does not know how long the trial lasted.

A. I do not remember the number of days.

Q. How long were you engaged in making the map that you have here?

A. Five or six days; I do not remember exactly.

Q. How long were you engaged in making the model?

A. It was all included in the five or six days.

Q. Did you furnish the lumber?

A. Yes.

801 Q. At your own expense?

(Counsel for respondent objects to all these questions as immaterial and irrelevant.)

A. Yes.

Redirect examination by Mr. MINER:

Q. I desire now to test your eyesight. How far are you from the arrow on the map marked "N" & "S?"

A. I can see the line.

Q. How far are you now from that arrow? Have you any idea?

A. About two feet and eight inches.

Q. Take your glasses off and see if you can see it now?

A. I am looking over them; I can see it.

Q. Can you see every part of it?

A. I can see the small line that runs up and down.

Q. Do you see the letter "N" at the top of it?

A. Yes, sir.

Q. And the letter "S" at the bottom of it?

A. Yes, sir.

Q. And you see that without your glasses?

A. Yes, sir.
Q. Do you see this red spot at the point of location?
A. Yes, sir.
Q. What is the color of it?
A. To my mind it is a brownish red.
Q. Do you see the letters there that I am pointing to?
A. I see a black line, that is all.
Q. Do you see the letter I am pointing to now?
A. Yes, sir.
Q. What is it?
A. That is the letter "A."
802 Q. Is it very plain to you?
A. Yes, sir.
Q. How far are your eyes from that letter?
A. Nearly four feet.
Q. It is about four feet lacking three inches. If you call that a brownish red what do you call these samples of ore; do not you know whether they are white or black?

(Objected to by counsel for complainant on the ground that the question is suggestive and leading.)

Q. What would you call the color of these samples introduced in evidence by you?
A. They are brown and yellow.
Q. Are there any other colors in them?
A. It is a mixed color; the color that brown and yellow would be if the two colors were mixed together. I do not know what you would call it.
Q. What is that color right on that corner here?
A. It is grey.
Q. What is this color here?
A. Brown.
Q. What is this color here?
A. White.
Q. What do you mean by saying you did not know the color of those rocks?

(Counsel for complainant objects to counsel for respondent cross-examining his own witness.)

Q. Explain what you meant in answer to a question of counsel that you could not tell the color, or something of that sort.
A. I can say this: By candle light things do not look to me the same color as they do by daylight.
Q. When you went down into that mine with a candle
803 what color did the ore appear to be? State all the different colors as it appeared to you with the candle.
A. It appeared to me of a dark brown, intermixed with yellow and white.
Q. Any other?
A. That is the general appearance of it, dark brown intermixed with yellow and white.

Q. Did you see any galena there?

A. And sparkling by the candle light; it was something that when fresh broken would sparkle.

Q. With a metallic lustre?

A. Yes, sir.

Q. Did you use glasses in sighting through the transit in making your survey?

A. No, sir; the telescope on my transit answered the same purpose.

Q. I wish you would take off your glasses and walk back from that map until you get to a point where you fail to see the north and south arrow on the map. I want to see how far you can see that arrow without glasses.

A. At long distances I believe my eyes are as good as ever they were; at short distances I have lost the sight of them and have to use glasses.

Q. Get back to a point when you cannot see that arrow any more and then let me know.

A. The fine line has gone now; now it comes in view.

Q. Now you see it?

A. Yes, sir.

(A distance of nine feet from the map.)

Q. You have seen what are termed lead ores frequently?

804 (Objected to by counsel for complainant as not being in redirect examination. Counsel has examined him fully as to his knowledge of lead ores and his experience with them on his examination-in-chief, and nothing new was brought out on the cross-examination.)

A. I have.

Recross-examination:

Mr. REDDY:

Q. How long were you in the mine in June in making your examinations?

A. I was in there about two hours and a half or two hours.

Q. And on the second occasion?

A. On the second occasion, I think, we went in at 11 o'clock and came out at three o'clock.

Q. About four hours?

A. Yes, sir.

Q. How many candles did you burn yourself—did you relight; did you burn out one candle?

A. No; burnt it well down; part of the time I did not have it lit.

On page 445 change last answer to read, Commencing at the turntable the north cross-cut is driven one hundred feet three inches in a northwesterly direction.

On page 485 in last answer change "two tons and a half" to "six tons and a half."

(Signed) JOHN ALEXANDERS.

805 ISAAC HARRIS, a witness called on behalf of the respondent, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.

A. Isaac Harris; age, 54; residence, Inyo county; occupation, merchant.

Q. How long have you resided in Inyo county?

A. Since 1865.

Q. Do you know Frank Silva, the defendant in this action?

A. Yes, sir.

Q. How long have you known him?

A. Since 1868, I think.

Q. Are you acquainted with the general reputation of the said Frank Silva for truth, honesty, and integrity during the time that you have known him in Inyo county, California, up to the present time?

(Objected to by respondent on the ground that it is irrelevant, immaterial, and incompetent.)

A. I have always heard him spoken of——

Q. I ask you first do you know his reputation in the county?

A. I think I do.

Q. Is it good or bad?

(Objected to by respondent on the ground that it is immaterial and irrelevant.)

A. It is good, as far as I know.

(Counsel for respondent moves to strike out the answer on the ground that it is not responsive to the question.)

806 Q. I ask you now his general reputation. What is his general reputation in Inyo county since you have known him for truth, honesty, and integrity; is it good or bad?

(Objected to by complainant on the ground that it is incompetent, immaterial, and irrelevant, and on the ground that the witness has not yet stated that he knows his general reputation for truth, honesty, and integrity.)

A. It is good, as far as I can say.

(Counsel for complainant moves to strike out the answer of the witness on the ground that it is not responsive to the question.)

Q. Do you know what the people of Inyo county, the community in which Frank Silva has resided since you have known him, think about his general reputation for truth, honesty, and integrity; do you know that general reputation?

(Objected to by complainant on the ground that it is immaterial, incompetent, and irrelevant what the people think of his general reputation, and on the ground that it does not appear that the people of Inyo county know anything about Frank Silva, nor does it appear that Inyo county, as a whole, is the community in which Frank Silva lives or is known.)

A. I have never heard anything to the contrary.

(Counsel for complainant moves to strike out the answer of the witness on the ground that it is not responsive to the question.)

Q. Where have you known Silva since 1868—at what place?
A. I think I first knew him in Cerro Gordo.
Q. In what county?
807 A. In this county.
Q. Have you known him in Inyo county since 1868?
A. I think I have.
Q. Do not you know that?

(Objected to by complainant as leading and suggestive.)

A. I think so.
Q. Have you known him in Inyo county since 1868?
A. I am pretty sure I have.
Q. Do you understand me when I ask you if you know what his general reputation in this county has been during the time that you have known him?
A. Yes; I understand you.
Q. What do I mean by that?
A. Whether it is good or bad.
Q. No; I mean his general reputation aside from the particular reputation that you know him by. Do you know the difference between a man's general reputation and what one individual man might think of him?

(Objected to by respondent as suggestive, leading, and incompetent.)

A. I think I do.
Q. Do you know Frank Silva's reputation for truth, honesty, and integrity in Inyo county since you have known him?

(Objected to by complainant on the ground that it is irrelevant, immaterial, and incompetent, and on the ground that it does not limit the reputation to the community and place where he has lived during that period of time.)

A. It is good, as far as I can answer it.
808 (Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. The question I ask you is, Do you know it, first? Do you know the general reputation of Frank Silva in Inyo county during the time you have known him?

(Objected to by complainant on the ground that it is incompetent, irrelevant, and immaterial, and it is not shown that Mr. Silva has been known to the people of Inyo county or that he has any reputation established in the minds of the people of Inyo county, and that it is not limited to the place he has lived or where he has been known.)

A. As far as I can answer, it is good.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question put.)

Q. I am going to ask you two questions, and I want two answers. My first question is this: Do you know what his general reputation is for truth, honesty, and integrity?

(Objected to by complainant on the ground that it is incompetent, irrelevant, and immaterial, and that it is not limited to the place or places where the defendant has resided during the period named.)

A. It is good, as far as I know.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question put.)

809 Q. I did not ask you what it was. I asked you if you knew it.

A. As far as I know, I have not heard anything to the contrary.

(Counsel for complainant moves to strike out the answer of the witness on the ground that it not responsive to the question.)

(Counsel for respondent gives notice that he will move to tax the costs of all these objections to the complainant in this action.)

810 Q. I ask you if you know the general reputation which Frank Silva has borne or had in Inyo county, since you have known him, for truth, honesty, and integrity. If you do know it you may state whether you know it, and, after having stated that you do know it or do not know it, then you may state whether that reputation is good or bad. Do you understand that question?

(Objected to by counsel for complainant on the ground that it is a compound question; that it is immaterial, irrelevant, and incompetent and assumes the fact that Mr. Silva has established a reputation in Inyo county, one way or the other, for truth, honesty, and integrity, and that it is not limited to the place where Silva has resided during the period in question, and that it is not limited in time—that is to say, the question carries it up to the present time; further, on the ground that it calls for an answer upon a subject of which the witness may have no knowledge at all. He is told, whether he knows Silva's reputation or not, he shall state what it is.)

A. His reputation is good.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question, as the witness has not yet answered that he knows it.)

Q. Are you acquainted with his general reputation?
A. Yes, sir.

811 (Counsel for complainant moves to strike out the answer on the ground that it is irrelevant, immaterial, and incompetent, and because he does not say in what particular trait is good; he has not said he is acquainted with his general reputation for truth, honesty, and integrity.)

Q. Are you acquainted with the general reputation of Silva for truth, honesty, and integrity, during the time you have known him, in this county?

(Counsel for complainant objects to the question as incompetent, irrelevant, and immaterial and assuming a reputation to exist.)

A. Yes, sir.
Q. Now, what is that general reputation for truth, honesty, and integrity during that time?

(Counsel for complainant objects to the question on the ground that it is incompetent, irrelevant, and immaterial.)

A. It is good, as far as I know.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. You have stated that you know what his general reputation — in those respects. Now, then, state whether that reputation is good or bad.

(Counsel for complainant objects to the question on the ground that it is immaterial and irrelevant.)

A. I have stated it.
Q. What is it?
812 A. It is good.

Mr. REDDY:

Q. Did you not put a qualification?
A. As far as I know.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question and is irrelevant.)

Q. Have you had any dealings with Silva during that time?

(Objected to by complainant as immaterial and irrelevant.)

A. I have.
Q. Since when did your business dealings commence with him?
A. Since 1868, I think—since I first knew him.
Q. You have been a merchant in this county since that time?
A. Yes, sir.
Q. Are you a member of the firm?
A. Yes, sir.
Q. What is that firm?

(Objected to by complainant as incompetent, irrelevant, and immaterial.)

A. Harris & Rhine.

Q. Is not that firm the largest merchandising firm in Inyo county?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. It is said to be.

(Counsel for complainant moves to strike out the answer on the ground it is hearsay.)

813 A. As a fact, is not the firm of Harris & Rhine the largest merchandising firm of this kind in this county?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. It is, sir.

(Counsel for complainant moves to strike out the answer on the ground it is immaterial, irrelevant, and incompetent. The courthouse is no place to advertise business from the witness stand.)

Q. Are you acquainted with the character which Silva has borne in this country during your acquaintance with him—whether it has been good or bad, as far as truth, honesty, and integrity is concerned?

(Objected to by complainant as incompetent, immaterial, and irrelevant.)

A. It is good.

Q. Do you know it, first—do you know what his character has been in those respects?

(Objected to by complainant as incompetent, immaterial, and irrelevant.)

A. It is good, as far as I know.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. Do you know what is the general character of Silva for truth, honesty, and integrity in this county since you have known him? If you know it, say so; then, afterwards, state what it is. In the first place, say whether you know what that character has been.

814 After having told me that you know what it has been, then tell me what it is.

(Objected to by complainant as incompetent, irrelevant, and immaterial, compound, and in the nature of an instruction to the witness how to answer.)

A. It is good.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. Have you told me whether you knew it?

A. I know it.
Q. What is it?

(Objected to by complainant on the ground that it is incompetent, irrelevant, and immaterial.)

A. It is good.

(Counsel for complainant moves to strike out the answer on the ground it is incompetent, immaterial, and irrelevant.)

Cross-examination:

Mr. REDDY:

Q. What do you mean, Mr. Harris, by "general reputation?"
A. By general reputation I consider a man that works for his living, pays for everything he contracts for, is a peaceable citizen, and a good man generally; that is what I consider character.
Q. I am not talking about character.
A. Or reputation.
815 Q. That is what you consider reputation?
A. Yes, sir.
Q. Do you know how good a man he is beyond what you have observed yourself; do you mean to speak of what he does in the way of work outside of what you have seen?
A. As long as I have known him.
Q. Out of the time you have known him how many days have you observed his actions; how long have you known him?
A. Since 1868; I have not been with him constantly.
Q. How much have you seen of him during all that time?
A. A very few months.
Q. Do you mean to say that you have been with him actually several months during all that time?
A. No; I have not worked with him or been with him.
Q. When you speak of general reputation you mean your opinion of the man?
A. Yes, sir.
Q. Your own opinion of him?
A. My opinion and what I hear others express.
Q. Who have you ever heard say anything about Silva's reputation for anything prior to the time of the difficulty with the Southern Development Company about the sale of this mine?
A. I could not name the parties.
Q. Can you name a single individual?
A. No; I cannot name anybody.
Q. Did you ever hear any one inquire or talk about him during that time?
A. Yes, sir.
Q. Can you name a single individual?
A. No; I cannot name anybody; I do not think I can.
816 Q. What gave occasion to people to question his honesty or bring it up in any way; what did he do to require any one to talk about whether he was honest or not, in your presence?

A. You usually hear when a man is a rogue.

Q. You do not hear of a man until it is found out that he is a rogue? Men are generally rogues before they are found out.

A. That I cannot answer for.

Q. You answered very promptly the other way, when you thought it was favorable to Silva. You say when a man is a rogue you generally hear of it. Is it not also a fact, well known in your experience, that there are many rogues who pass for honest men until they are found out?

A. I agree with you on that.

Q. You agree with me equally as strong as in the other case?

A. Perhaps so.

Q. What did Frank Silva ever do, if you know, or on what occasion did you hear his reputation for honesty and integrity discussed, if discussed?

A. I never heard anything to the contrary.

Q. Have you heard it discussed at all by any one prior to this difficulty?

A. Prior to this difficulty?

Q. Yes, sir.

A. Only so far as his being an industrious and sober man.

Q. Who did you hear say he was an industrious and sober man, and what gave rise to that conversation?

817 A. That I cannot tell.

Q. Can you state any time or occasion when you heard his name mentioned and his honesty or integrity discussed?

A. I cannot.

Q. Where did Mr. Silva live for the great portion of the time that you have known him?

A. He has worked at Cerro Gordo most of the time.

Q. How far is Cerro Gordo from this place?

A. Forty miles.

Q. How much time have you spent in Cerro Gordo?

A. I used to be up there quite frequently in the early days.

Q. How much time have you ever spent in Cerro Gordo?

A. I could not tell how much time; I used to go there every two or three weeks.

Q. How long did you remain?

A. A day or two.

Q. Did you ever inquire what his reputation was in Cerro Gordo?

A. No, sir.

Q. Never had occasion to?

A. No, sir.

Q. You do not know what his reputation was sixteen years ago, ten years ago, or eight years ago, do you?

A. Only that he was an industrious, hard-working miner.

Q. Mr. Harris, how much do you know about what Mr. Silva did in Cerro Gordo—about how hard he worked; do you know how hard he worked?

A. I do; I saw him work.

Q. How many days did you see him work?

818 A. I did not see him work.

Q. Where did he work?

A. In the Italy.

Q. How many days did you stand there and see him work?

A. Not many.

Q. How many? Did you see him work a day through in your lifetime?

A. No, sir.

Q. Why do you say it, then, when you never saw him do a day's work in your life?

A. You asked me his general reputation.

Q. Did you see him do a full day's work in your life?

A. No; I was not a foreman and miner.

Q. Can you determine whether he was a hard-working or easy-working man, never having seen him work a full day's work?

(Objected to by counsel for respondent on the ground that the witness is not placed upon the stand to give his own notions of the defendant's working ability or character, but to give the general impression, the general reputation, and the general character of the witness for truth, honesty, and integrity, and not to give a private opinion or a private statement of any fact that he knows.)

A. Only what I have heard others say.

Q. Now, you spoke of him as a hard-working man. What you said was based on hearsay, then?

A. Yes, sir.

Q. How many persons, if any, did you ever hear say that Frank Silva ever worked harder than any other man, or was

819 a hard-working man?

A. I do not know that he worked harder than any other people.

Q. Did you ever hear any one say that Frank Silva was a hard-working man, before the commencement of this suit?

A. I think I have.

Q. Who did you ever hear say so?

A. I did not keep a record.

Q. Is it a mere shadowy recollection of something a long way back in the past, or something that is fresh and clear in your memory?

A. You know how miners talk, generally.

Q. I am asking you now about actual character, and I do not want you to put in any shadowy matter as testimony, but state facts. Name a man who you heard say he was a hard-working man prior to the commencement of the suits between himself and the Southern Development Company.

A. I cannot say.

Q. Can you remember any time, place, or occasion when anything of the kind was stated to you?

A. Yes; when he worked at Kearsarge.

Q. Where was it you had that conversation?

A. In the store.

Q. With whom was it?
A. I could not tell you that.
Q. Did you ever hear it at any other time or place?
A. Perhaps I did.
Q. I ask you if you did. I did not ask you for "perhaps."
820 I want you, as an honest, straightforward man, to tell me facts that you know, and not be guessing at it.

(Objected to by counsel for respondent on the ground that it is irrelevant and immaterial and incompetent and not cross-examination.)

A. I have other business to attend to besides keeping a record of such things as that.
Q. That is what I thought. Then the fact is that you know little or nothing of it, to your own knowledge, whether he was a hard-working or easy-working man?
A. I never worked with him.
Q. Answer my question. Is it not the fact that you know little or nothing of it, of your own knowledge, whether he was a hard-working or easy working man?
A. I could not swear to it myself.
Q. That was one reason that you had for saying that his general reputation for truth, honesty, and integrity was good. I understood you to say that you had another reason, which was that he always paid everything he owed?
A. Yes, sir.
Q. Do you not know that that is not so? Do not you know that he has not paid your firm what he owes you?
A. He has always paid——
Q. Do not you know that he has not paid John Eddy what he owes him; after he received this ten thousand dollars do not you know that he did not pay John Eddy, and do not you know
821 that his reputation in Darwin is that he has not paid his bills even when he sold his mine; that he shipped the money to Portugal, and did not pay his creditors in Darwin, and does he not owe them to-day, to your knowledge?

(Objected to — respondent as immaterial, irrelevant, and assumes facts which cannot be proven by this witness or any other witness in Inyo county or the State of California.)

A. I do not know whether he owes anything in Darwin.
Q. Do you know what people say about him in Darwin as to whether he pays his debts or not?
A. No, sir.
Q. Do you know what people say about him in Cerro Gordo as to whether he pays his debts or not—whether he is honest in that particular?
A. No, sir.
Q. So far as Darwin and Cerro Gordo are concerned, you do not know whether he is known there by the people of the community—not one individual—as a hard-working man, and you do not know

whether he is an honest man and always pays his debts; you do not know what the people of those two places say about him?

A. No, sir.

Q. Do you know him in any other place in this county other than Kearsarge?

A. I knew him when he was working in Cerro Gordo.

Q. Those have been the principal places where he has resided in this county?

A. Yes, sir.

Q. You do not know what persons say about him there, whether he pays his debts and is honest?

A. No, sir.

822 Q. You do not know what people say about him so far as his honesty and integrity is concerned? You have been speaking of what you heard from one or two individuals, generally? You cannot point out a half a dozen individuals in the entire community that you have ever talked with about that matter?

A. I think I could.

Q. Do you know the general reputation of Silva in the last two or three years in Darwin as to truth, honesty, and integrity? Do you know what the people of that town say about him or think about him?

A. I cannot say what they think about him.

Q. Do you know what is generally said about him there as to truth, honesty, and integrity in Darwin by the community, not by one or two individuals?

A. I never heard anything wrong or anything against him.

Q. Do you know what his reputation is?

A. It is good as far as I know.

Q. Do you know what his reputation has been in Darwin in the matter of honesty for the last two or three years?

A. I could not answer that. I never heard anything to the contrary.

Q. I ask you if you know what his reputation is. You are not acquainted with the people of Darwin for the last two or three years?

A. Some of them.

Q. Have you been in Darwin in the last two years?

A. Yes, sir.

Q. When?

A. I could not tell exactly.

823 Q. Tell me when. I want to figure out to you that you have not been there in the last two years.

A. I have.

Q. Tell me, then, when it was.

A. I could tell by referring to our books.

Q. Refer to your books or anything else to show me that you have been there in the last two years.

A. I have been there in the last two years.

Q. Have you been there in the last eighteen months?

A. I was there a year ago last summer. I went to Reilly.

Q. How long did you stay in the town of Darwin?
A. I was there over night.
Q. How long?
A. One day.
Q. How many hours?
A. I kept no record of it.
Q. Did you get there in the evening after dark or before dark?
A. I got in before dark.
Q. About what time?
A. Maybe two or three o'clock.
Q. How many people did you see and talk to that night?
A. I could not see a great many. There are not a great many there.
Q. I ask you how many you saw, if you remember?
A. Three or four or half a dozen; perhaps more.
Q. Who were they?
A. I do not know that I can recall them. I saw Jack Gunn, Anthony, Wilson; that is about all there were there.
Q. You do not mean to say those were all the people in Darwin a year ago?
A. At the time when I was there.
824 Q. Living in the town—not immediately at the store you went to or at the place where you stopped. I ask you how many people were living in Darwin then? Do you mean to say there were only that number?
A. No; I did not go round to inquire.
Q. So far as you know, a majority of the people living in Darwin and about Darwin might have regarded Silva as not being an honest man and said so, and you not hear about it?
A. No; I would be apt to hear of it.
Q. Are you able to say it might not have been the fact in the last year or two that two-thirds of the people of the town of Darwin might have been of the opinion and have expressed it that Silva was not an honest man and you not have heard of it?
A. If I was not there I could not hear it.
Q. You were not there. Answer my question straight. Is that the fact or not?
A. I do not understand your question.
Q. Are you able to say it might not have been the fact in the last year or two that two-thirds of the people of the town of Darwin might have been of the opinion and have expressed it that Silva was not an honest man and you not have heard of it; might not that be so?
A. I do not understand that. If I was not there I could not hear it.
Q. I ask you if that could not be so or the reverse of that;
825 do you mean to say that whenever a majority of the people entertain an opinion and express it about the honesty of a man in Darwin that you are immediately informed of it?
A. Not necessarily.

Q. I ask you if it is not the fact that two-thirds of the people may have been of the opinion and have expressed it that Frank Silva was not an honest man and you not have heard of it?

A. If I was not there I could not hear of it.

Q. Then that would be a reason why you should not know it?

A. Yes; certainly.

Q. Then why do you not answer me? Do you know the difference between reputation and character?

A. I think I do.

Q. What is it?

A. Reputation, as I understand it, is if a man is talked of as an honorable, respectable citizen—that is, reputation generally; if he is a rogue he is reported otherwise. Is not that the way you understand it?

Q. I am asking for you to determine the difference between reputation and character. What is it?

A. I have explained it as far as I can.

Q. What you mean, I presume, is that reputation and character are the same—synonymous terms?

A. I may have a good character and not be a reputed one, and it may be the other way.

Q. You have been a personal friend of Mr. Silva for a number of years?

A. Not a bosom friend.

826 Q. I simply ask you a plain question; as a man of intelligence and sense I expect you to answer it.

A. I am as much of a friend to him as I am to any of my customers.

Q. He has been a customer of yours?

A. Yes, sir.

Q. I ask you now to answer my question; have you not been a warm friend of his?

A. No more than I am to anybody else.

Q. Have you been a warm friend of Silva's?

A. I cannot say that I have.

Q. Do you not entertain friendly feelings towards him?

A. I do, sir.

Q. Warm, friendly feelings?

A. Friendly feelings; nothing warm about it.

Q. You never get warm in friendship?

A. I do, sometimes; I feel pretty warm now.

Q. In friendship?

A. Yes; I do.

Q. Do not you entertain a warm, friendly feeling for Silva?

A. No, sir.

Q. Have you been on his bond in any of the litigation between the Southern Development Company and him?

A. I have, sir.

Q. How much?

A. I think it was $5,000, if I recollect right.

Q. That was for bail when he was arrested?

A. Yes, sir.
Q. Have you gone on any other bond for him?
A. No, sir.
827 Q. Have you advanced him any money to carry on this litigation?
A. No, sir.
Q. Did you not at one time advance him five hundred dollars?
A. Not to him.
Q. Did you not at one time advance to him as principal on the note five hundred dollars, and having J. C. Eddy and W. H. Mitchell as sureties, to enable him to carry on litigation with the Southern Development Company in these suits?
A. I advanced the five hundred dollars, but I cannot answer about these suits.
Q. Did you not know it was to enable him to carry on this litigation?
A. I was not here when the money was loaned to him.
Q. Who loaned it to him?
A. My partner.
Q. It was advanced to him out of the firm funds?
A. Yes, sir.
Q. Did Frank Silva pay you back that money?
A. No, sir.
Q. Did not his sureties have to pay it?
A. Mr. Eddy paid it.
Q. You demanded it of him?
A. I demanded it of all of them.
Q. Did you not demand it of Silva?
A. I presume so.
Q. Did you get it when you made that demand?
A. I cannot answer that; my partner attends to that business, as you know.
Q. Do not you know Eddy had to pay that money, and
828 that Frank Silva had to pay it?
A. Mr. Eddy paid it.
Q. You know Silva got two men to go surety for five hundred dollars, and then they had to pay it?
A. I know they paid it.
Q. Did you not inquire about it to see if he acted honestly and honorably in that transaction?
A. I know nothing about it.
Q. Yet, without knowing whether he acted honorably in that matter or not, you come in here and swear you have known him as an honest man?
A. I have.
Q. You did not mention that affair at all before.
A. You did not ask me.
Q. You never would have told of it if I had not asked it.
A. I am not allowed to tell anything if I am not asked.
Q. How long has Mr. Silva been a customer of yours?
A. I think ever since 1868.

Q. And that is the reason why you have that friendly feeling towards him?

A. Perhaps so.

Q. Because he has been your customer. Have you not frequently talked about this litigation between Silva and the Southern Development Company?

A. I have.

Q. You have talked about it in the community here?

A. I expect I have.

Q. And at Bishop Creek and wherever you have gone?

A. I do not know that I have at Bishop Creek; I have not been there for a long time.

829 Q. At different points of the county where you have traveled you have talked about this matter?

A. I expect I have, if I was asked.

Q. And you have espoused Silva's cause and argued in his favor?

A. I did, sir.

Q. And tried to convince other people that Silva was right in this matter?

A. I presume I have, in the way I understood it.

Q. You have argued it thoroughly?

A. I think so.

Q. You have never heard the witnesses in this case prior to making those arguments?

A. I think not.

Q. You knew nothing about the facts yourself?

A. No, sir.

Q. Still, you went out and argued in favor of Silva, and endeavored to make public opinion run in his favor all you could during the trial here?

A. I did not make it a business.

Q. Whenever you did it you did it with a view of making public opinion for Silva?

A. With the view of my feelings.

Q. And helping your friend?

A. Yes, sir.

Q. You tried to frame public opinion in the county as far as you could?

A. I did not put myself out of the way to do it.

Q. You know Mr. Yerington, who was president of the Southern Development Company during the litigation and up to a late date?

A. Yes, sir.

Q. Also president of the Carson & Colorado Railroad Company?

830 A. Yes, sir.

Q. The fact is that you hate that man?

A. I have no particular love for him.

Q. I ask you a fair, simple question. The fact is you hate that man?

(Objected to by respondent as irrelevant, incompetent, immaterial, and not cross-examination.)

A. I cannot say I hate him.

Q. Do you not entertain ill-will towards him?

(Same objections by respondent and, further, that Mr. Harris' personal enmities have nothing to do with this case at all; it is a proposition between the Southern Development Company and Frank Silva.)

A. I do, sir.

Q. Does not that feeling extend to the companies which he represents, the Carson & Colorado Railroad Company and the Southern Development Company of Nevada?

(Objected to by respondent on the ground that it does not appear that the Southern Development Company of Nevada or the Carson & Colorado Railroad Company are represented by Mr. Yerington; that there is no evidence of that fact at all, and that it is a pure assumption, not warranted by the evidence in this case; on the contrary, the evidence shows that Mr. Yerington is no longer president of the Southern Development Company.)

A. I have no ill-feelings towards the railroad company
831 or any other company which Mr. Yerington may represent.

Q. Do you not, on account of your feeling toward Mr. Yerington, desire to see Mr. Yerington and the Southern Development Company in this litigation defeated?

A. I have no interest in it whatever.

Q. Do you mean to say that you have no interest in a cause when you go and talk to the citizens of this county and try to influence public opinion in favor of Silva?

(Objected to by respondent on the ground that it does not appear from the testimony of the witness that he has endeavored to influence public opinion in this county in favor of Silva or against Silva and it is not in cross-examination and is immaterial, irrelevant, and incompetent.)

A. No, sir; I have no interest whatever.

Q. I am not asking you about your interest. I am simply asking you whether you do not desire to see Mr. Yerington and the Southern Development Company defeated in this action and to see Mr. Silva win.

A. I do not want to see him win if it is not just.

Q. Do not you wish, as you stand now, without any conditions at all, to see Mr. Silva win this case?

A. I think I would.

Q. Do not you know that you do; do not you know that you want to see Silva win this case?

A. If it is just, as I understand it, I wish him to win.

832 Q. I am not talking about just or unjust. I ask you if you do not desire to see Silva win this case.

A. I would rather see him win it.

Q. Do not you feel it strong?

A. No; not overstrong.

Q. Do not you desire to see Mr. Silva win this case just as much as you would desire to win it if you were in his place?

A. No, sir.

Q. Not quite so much?

A. No, sir.

Q. Have not you talked about Mr. Yerington and about the Southern Development Company, and argued with people in this county that it was a rich company and that they could stand the loss, and even if they were defrauded by Silva in the sale of the mine they are so rich that they ought not to complain about it?

A. No; riches have nothing to do, in my opinion, with a thing like that.

Q. Did you not argue with various citizens that Mr. Yerington ought to be ashamed of himself—I call your attention to this specific language—to go into litigation with Frank Silva about this matter?

A. I do not know that I ever expressed it in that way.

Q. How did you express it?

A. I may have expressed it that if I had been in his place, even if I had been cheated, I would not make a fool of myself and have a man arrested and try to get the money back.

Q. Your idea is, no matter how badly Mr. Silva had de-
833 frauded Mr. Yerington, he had no right to bring any suit against Silva on that account?

A. I do not think that. He had a right.

Q. You regard it as foolish for him to do it, though he had the right?

A. We may differ in opinion.

Q. Did you make these arguments to people here in this town?

(Objected to by respondent as immaterial, irrelevant, and incompetent, and counsel gives notice to complainant's counsel that he will move that the entire cost of this cross-examination be taxed to complainant).

Mr. REDDY: We desire to say it is nearly time that counsel should quit threatening us with costs. We do not think it is exactly courteous for counsel to threaten us with costs all the time in this matter. If his honor should adjudge costs against us we will pay them, or any other punishment that may be inflicted on us we will prefer to these continual threats of penalties; so counsel may save himself the trouble of threatening us and act, instead of threatening.

A. I have, sir.

Redirect examination:

Mr. MINER:

Q. Do you know Mr. Yerington?

A. I do.

Q. Have you heard anything about him that justifies you in making remarks and arguments about him in connection
834 with these cases between this company and Frank Silva?

(Objected to by complainant on the ground that it is irrelevant, immaterial, and incompetent, and, further, that it is hearsay, and counsel has no right to assail the character of a private citizen in this way; further, it is not fair to assault a man in the back in that way during his absence. I appeal to the chivalry of counsel not to do that until the man is present, when he can answer for himself.)

Mr. MINER: I do not propose to allow chivalrous feelings to ruin the cause of my client, nor do I propose to say behind the man's back what I would not say to his face.

A. I have heard a great many speak about it.

Q. Have not you heard the proposition of the sale of this mine discussed frequently since Silva was arrested by the Southern Development Company of Nevada?

(Objected to by complainant as incompetent, immaterial, and calls for hearsay.)

A. Yes, sir.

Q. Now, in those discussions did you not hear what purported to be the facts in regard to the matter?

(Same objections by complainant.)

A. Yes, sir.

Q. And did not you and other people generally in this county consider that Frank Silva was wronged in this matter by the Southern Development Company of Nevada?

835 (Objected to by complainant as irrelevant, incompetent, and immaterial and not complementary to any court to have such questions asked, to be submitted to the serious judgment of any court. It is a question for the court to determine and not for the witness and other persons.)

Q. Did you not know that Silva was tried on this criminal action which has been referred to, upon which you went on his bond, and the action was by the district attorney of this county and by the court dismissed subsequently to the trial?

(Objected to by complainant as incompetent, irrelevant, and immaterial; that the records of the court are the best evidence of the action taken by the court and by the district attorney.)

A. Yes, sir.

Q. Did you hear how the verdict of that jury stood on his trial?

(Objected to by complainant on the ground that it is irrelevant, immaterial, and incompetent.)

A. I did.

Q. What did you hear was the result of that verdict?

(Objected to by complainant as irrelevant, immaterial, and incompetent and calling for hearsay.)

A. A disagreement.

Q. How did it stand in number?

(Same objections by complainant.)

A. Ten to two.

Q. Ten in whose favor?

836 A. Ten in favor of Silva.

Q. Ten for acquittal?

(Same objections by complainant.)

A. Yes, sir.

Q. And two for conviction?

(Same objections by complainant.)

A. Yes, sir.

Q. Was that one of the things that helped to form the opinion in your mind that you have now have on this transaction between Silva and the Southern Development Company?

(Same objections by complainant.)

A. I do not know that it is.

Q. You stated, in answer to questions by counsel on the other side, that you were in favor of Silva, and all these things that you heard about the trial and the verdict of the jury and the other things that you have heard in connection with it helped to give you an opinion favorable to Frank Silva, such as you have testified to?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. It strengthened my view.

Q. Are you still his friend—to-day?

(Same objections by complainant.)

A. As much as ever.

Q. Something was said to you by counsel about Silva shipping $2,500 to Portugal instead of paying his debts? Did you ever hear of such a thing as that in your life?

A. I did not.

837 Q. Immediately after the sale of his mine did he not bring money down here and pay his debts?

(Same objections by complainant.)

A. He paid me some.

Q. Immediately after the sale of his mine did he not come down here and pay you some money?

A. I could not say how soon after, but after the sale.

Q. And before he was arrested?

A. Oh, yes.

Q. Did he pay his bill at your store?

A. Yes.

Q. In full?

A. Yes, sir.

(Same objections by complainant to all of this testimony.)

Q. You knew he had sold the mine?

A. I did.
Q. It was before he was arrested in this criminal case?
A. Yes, sir.
Q. And he paid his bill in full at the store?
A. He did; he did not owe much, though.
Q. Do you know why Frank Silva did not pay that $500 which he borrowed from your firm and for which Eddy and Mitchell went security?

(Same objections by complainant.)

A. I do not know who paid it.
Q. It was paid?
A. It was paid.
Q. Do you know who paid it; whether Frank Silva paid it in person or some one else?
A. Eddy paid it.
Q. Did you yourself ask Silva for the money?
A. No; I did not.
838 Q. You do not know where the money came from that paid it?
A. No, sir.
Q. It might have come from Silva?
A. I could not answer that.
Q. I will ask you if you ever heard Silva's honesty questioned until this suit was brought in this county anywhere?

(Objected to as not re-examination; that counsel went into that matter fully in examination-in-chief and exhausted the subject.)

A. I did not.

Recross-examination:

Mr. REDDY:

Q. I understand you to say that after Silva sold the mine he paid up his store bill with you. Do you mean to state that as a fact?
A. He did not owe much.
Q. He paid you what he owed you?
A. Yes, sir.
Q. You got a part of the proceeds of this sale, did you? That is what you understood?
A. Yes; if that was the mine.
Q. You understood he made a sale and was paying you out of the proceeds of the sale?
A. Yes, sir.
Q. So that if this money was obtained by fraud you enjoyed a part of it? Did that help you to form an opinion favorable to Silva?
A. No; it did not.
839 Q. The fact that he sold the mine and came down and paid you part of the money did not make you feel a little bit more favorable to Silva than before?
A. No, sir.

Q. You felt kindly toward him for paying you?
A. I am to any one that owes me and pays.
Q. Do not you know where the money comes from?
A. I think I do.
Q. If it was obtained by fraud you would give it back?
A. No; I do not know that I would.
Q. If you should get hold of any money and you knew it had been stolen from your neighbor or obtained by fraud or obtained by robbery would you not give back the money if it was paid by the robber or rogue?
A. That is rather a leading question.
Q. I know it is, and that is the one I am going to put.
A. I do not know. I am no better than the majority.
Q. I do not know that you are. I am inquiring about it.
A. I do not think I would like money that was obtained by robbery.
Q. Would you give it back if it came to you in that way?
A. It might depend on the amount, perhaps.
Q. If it was large enough to be an object you would not give it back?
A. Perhaps not if it was justly paid me.
Q. If you knew it had been obtained by robbery, fraud, or theft you would not give it back if it amounted to a considerable sum, if you could help it?

(Objected to by respondent as irrelevant, immaterial, incompetent, and not cross-examination.)

840 A. That is a great question.
Q. What is your answer to the question?
A. I would have to study into that. It would depend by whom it was paid.
Q. Would it depend on whom the robber was, in case of a robbery?
A. Yes; I think it would.
Q. And if it was theft, would it depend on whom the thief was whether you gave it back or not?
A. It would depend on circumstances.
Q. Whether you gave it back or not? I would like to have you answer that question. Would you or not give it back if you knew it had been obtained by robbery, theft, or fraud?
A. I do not know but what I might.
Q. Can you say you would?
A. As I said, it would depend on circumstances.
Q. The circumstances you have not named; they would be extraordinary circumstances under which you would give it back, would they not?
A. If any one was to rob you and pay me a debt with it I might say, "Reddy can stand it."
Q. And so if it was a rich corporation or company who had been robbed, why, you would say, "the rich company can stand it?"
A. No, sir.

Q. Why would it be that you would say I could stand it; is it out of ill-will towards me?

A. I will illustrate it. Suppose Frank Silva was to rob a poor
841 man and came and paid me the money and I knew he robbed that poor man I think I would not want to keep the money.

Q. If it was a rich man, what then, would you give it back?

A. It is a question.

Q. It is a serious question. If he was rich, would you give it back?

(Objected to by respondent as irrelevant, immaterial, and incompetent.)

A. I hate to answer such a question as that.

Q. I want an answer to the question.

A. I will answer this—that I think I am as honorable as the majority of men.

Q. I did not ask you to judge yourself. I simply asked you whether you would give back the money under such circumstances. I do not ask you to say whether you are or not as honorable as the majority of men. I simply want you to answer my question.

(Objected to by respondent because the witness has answered that it depends upon circumstances.)

Q. What would be your answer?

A. I do not know that I can answer that question. I have expressed it as near as my feelings go.

Q. In case you disliked the man who was robbed or the company and you knew they were rich, would you then give back to them what had been taken from them by robbery, threats, or fraud if it had been paid to you in the manner in which this money was paid to you by Silva?

842 A. No; I do not know as I would, if it was justly due me and had been paid to me.

Q. You say that the jury in the case of The People of the State of California *vs.* Frank Silva, under charge of obtaining the purchase price mentioned in this case by false and fraudulent representations, stood ten for acquittal and two for conviction; is that what you say?

A. I so understood it.

Q. Then who did you understand it from; who told you?

A. General hearsay. I was not in court.

Q. Then, for aught you know, it may be that the jury stood ten for conviction and two for acquittal?

A. I did not understand it so.

Q. So far as you know of your own knowledge, it may be ten for conviction and two for acquittal?

A. No; I had it from some of the jurymen themselves.

Q. You talked with the jurymen?

A. I did.

Q. At what time did you talk with them—before or after the trial?

A. After the trial.

Q. Did you talk with any of the jurymen before the trial?

A. I may have talked to them if they were in the store.

Q. I will ask you if you did not gather the jurymen in your store before the trial and try to influence the jurymen in this county?

A. No, sir.

Q. Do not you know that men who were jurymen were brought into your store and threatened with suits for foreclosure and suits for debt if they should turn out to be unfavorable to Silva?

A. I do not know anything of the kind.

Q. Did you not authorize it?

A. No, sir.

843 Q. Did not a number of jurymen spend their evenings in your store before the trial and while they were being examined?

A. They may have been there evenings.

Q. Did you not discuss this question in the presence of jurymen before the trial began and before they were sworn in?

A. That I cannot tell.

Q. You may have done so, may you not, as far as your memory serves you? Do you not know that the merits of this question were discussed in the presence of a number of men who were summoned here as jurors?

A. It may have been. I do not take particular notice of who comes in the store.

844 Q. You knew they were summoned here as jurymen?

(Objected to by respondent on the ground that if this is for the purpose of impeachment the circumstances should be stated and the times and the parties, and the witness should be given an opportunity to explain, and also on the ground that it is irrelevant, immaterial, and incompetent.)

Q. I ask you if you did not know that a number of these men in whose presence you discussed that question and heard it discussed were summoned as jurymen for the trial of the cause mentioned?

A. I may have known.

Q. You made the argument to those gentlemen which you have mentioned here in their presence?

(Same objection by respondent.)

A. I cannot say that I did.

Q. That was your line of argument generally?

A. I have something else to attend to.

Q. When you did argue it you argued it on the line mentioned here?

A. Perhaps I did.

Q. You put forth those arguments in the presence of those jurymen?

A. I may have done so.

Q. You say you know that the district attorney, after the disagreement of the jury, dismissed the criminal action against Silva?

A. So I was told.

Q. Did you state on what ground he did it?

8441 A. No.

Q. How do you know that he dismissed it?

A. Only from the report.

Q. I will now ask you if you did not argue and discuss the question for the very purpose of establishing an opinion among the people of Inyo county that Silva was right on this question and that the company was wrong?

A. I cannot say that I did.

Q. Did you not have that in view?

A. I thought so myself; that was my belief.

Q. Did you not make these arguments for that very purpose, of getting other people to think as you did?

A. I may have expressed my views on the matter and my feelings.

Q. When you expressed your feelings and views was it not for the purpose of influencing other people to believe as you believed?

A. I do not know that it was.

Q. Do not you know that you had no other purpose in view?

A. We like to talk.

Q. Did not you talk and discuss the matter with a great deal of feeling?

A. Some feeling.

Q. And with a desire to impress the persons with whom you were conversing of the truth of what you said?

A. What I believed and understood.

Q. What you said you believed?

A. I usually do.

845 Q. And what you believed you said, and you argued it for the purpose of making other people believe as you believe?

A. No; I cannot say it was.

Q. Did you not pay for a publication in the Inyo Independence, in which Frank Silva set forth his views of the case and published it here to the people of Inyo county?

A. That I had it published?

Q. Did you not cause to be written for Silva a certain publication here in the Inyo Independence, wherein Frank Silva stated that he was a poor man and had lived on beans for a number of years and was an honest man, and all that sort of thing, just about as you stated it here; did you not cause him to publish that?

A. Not to my recollection.

Q. Do not you remember a letter published by Silva in the Inyo Independence in which he gave his version of the affair?

A. It may have been published.

Q. Did you not cause that to be written for him?

A. No.

Q. Did you not pay for publishing it?

A. I think not.

Q. Do you not know whether you did or not? Will you swear that you did not?

A. I did if he gave me the money to do it with.

Q. I ask you if you did not pay the printer for publishing that letter; will you swear that you did not?

A. Not to my recollection.

Q. Is it not a fact that there is an ill-feeling, not only between yourself and Mr. Yerington and the companies which he
846 represents here, but between himself and your firm—the firm of Harris and Rhine?

A. Not the companies.

Q. Mr. Yerington, the president?

A. We are not particularly stuck after him.

Q. Is it not the fact that your hatred and ill-will towards Mr. Yerington is founded on differences between himself as president of the Carson & Colorado Railroad Company and your firm?

A. Not exactly as president of the railroad.

Q. Is it not because he would not give you the rates of freight and accommodations on his railroad that you demanded that caused you to dislike him in the first instance?

A. We did not demand anything more than any one else.

Q. Is it not because he did not yield to you what you requested of him in the way of rates and freight and accommodations on his railroad?

A. We never asked for any accommodations.

Q. I mean accommodations that are paid for?

A. We asked for nothing but what others got.

Q. Did not the ill-feeling arise out of a difference between your firm and Mr. Yerington as president of the Carson and Colorado Company about rates of freight?

A. No.

Q. What did it arise out of?

A. We do not like his ways; that is all.

Q. Anything else?

A. No.

Q. Did you not have a long contest here about a telegraph line?

A. Yes.

Q. Did not the ill-feeling arise out of that?

847 A. Perhaps it did.

Q. Did you not have ill-feeling against the company for not yielding to your demands?

A. No; no ill-feeling towards the company.

Q. It is all centered on the president?

A. I do not like Mr. Yerington; I am not particularly stuck after him.

Q. It was because of his acts as president of the Carson & Colorado Company that you disliked him?

A. It may have been.

Q. You never had any difference with Mr. Yerington personally until you had difference with him as president of the railroad?

A. I did not know much of him.

Q. Did not your ill-feeling arise towards him as president of the road and out of business matters?

A. Very likely.

Q. Have you not gone yourself around with your partner in this community ridiculing the Carson & Colorado Company as the basket company?

(Objected to by respondent as immaterial, irrelevant, and incompetent, not in cross-examination, and not tending to prove any of the issues in this case.)

A. I have no feeling against the company.

Q. I ask you a question. Please give heed to it and not to the objection of counsel. I ask you if yourself and partner have not, on various occasions, in public and private, ridiculed the Carson & Colorado Company, and frequently called them the basket company?

(Same objection by respondent.)

848 A. I may have done so for their small way of doing business.

Q. Now, you started to ridicule the company and did so, both yourself and your partner, because you had ill-feelings toward the company; is not that it?

(Same objection by respondent.)

A. We may have done so.

Q. Have not yourself and your partner an ill-feeling towards the railroad company because it enabled the citizens of this town to send below and get their goods from San Francisco and get them quick so that they are not compelled to rely on your firm for their supplies?

A. No.

Q. And because they can buy their goods in San Francisco and freight them here cheaper than they can buy them of you. Is not that one cause of your dislike of the company and Mr. Yerington?

(Objected to by counsel for respondent as immaterial, irrelevant, and incompetent and not in cross-examination.)

A. I do not know why it should. Those that wanted to send off used to send while the teams were running.

Q. Does it not afford greater facility and does not the existence of the railroad company cut into your business and injure it in that way?

(Same objection by respondent.)

A. It may have hurt it some.

Q. Is not that one reason why you dislike Mr. Yerington?

(Same objection by respondent.)

A. No.

849 Q. Are not the reasons which I have enumerated to you here for your dislike of Mr. Yerington reasons why you would like to see Mr. Yerington defeated or his company defeated in their litigation with Silva?

(Same objection by respondent.)

A. No.
Q. Do you know the reasons why the district attorney moved to dismiss the action.
A. I do not.
Q. You do not pretend to know anything about that?
A. I do not.
Q. You simply heard that such was the case?
A. Yes.
Q. All you know about it is founded on hearsay?
A. Yes.

(Counsel for complainant moves to strike out all that the witness has said upon the matter of the dismissal of the action of the people against Silva.)

(Signed) ISAAC HARRIS.

(A recess was here taken until to-morrow, Thursday, June 18th, 1886, at 10 o'clock a. m.)

850 THURSDAY, *June* 17, 1886.

(Counsel and parties met pursuant to adjournment.)

OME I. MAIRS, a witness called on behalf of complainant, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.
A. My name is Ome J. Mairs; age, 43; residence, Independence, Inyo county; occupation, livery stable keeper.
Q. How long have you resided in Inyo county, California?
A. A little over sixteen years, I believe.
Q. Are you acquainted with the respondent in this action, Frank Silva?
A. Yes, sir.
Q. How long have you known him?
A. About sixteen years.
Q. Where have you known him for sixteen years?
A. At Cerro Gordo.
Q. What county?
A. Inyo county and at Darwin, and I have seen him round ever since.
Q. Do you know what Silva's general reputation for truth, honesty, and integrity was prior to the 7th day of May, 1884, and during the time that you have known him, in the communities where he has resided in this county?

(Objected to by complainant on the ground that it is immaterial, irrelevant, and incompetent.)

A. Good, for anything I know.
Q. I ask you first did you know it?
A. Yes, sir.
851 Q. What was that reputation?

(Objected to by complainant on the ground that it is immaterial, irrelevant, and incompetent.)

A. It was good.

Q. How long during that time did you know him in Cerro Gordo, Inyo county, California?

A. Three years, anyway; I do not know exactly; about three years.

Q. What was his general reputation in that community of Cerro Gordo for truth, honesty, and integrity?

(Same objections by complainant.)

A. I never heard nothing to the contrary; I never heard a word against him.

Q. Was his general reputation good there?

A. It was good.

Q. In those respects?

A. Yes, sir.

Q. Since you knew him at Cerro Gordo at what other place in Inyo county have you known him prior to the 7th day of May, 1884?

A. I have seen him at Darwin when I have been out there and when he has been up here.

Q. What was his general reputation in Darwin during the time you have known him for truth, honesty, and integrity?

(Same objections by complainant.)

A. I never heard a word about him there; I have often seen him when I go out.

Q. Did his general reputation for truth, honesty, and in-
852 tegrity stand well at Darwin?

(Same objections by complainant and, further, that it is leading and suggestive.)

A. It did, for anything I know.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question and is incompetent.

Cross-examination:

Mr. REDDY:

Q. How long is it since you have known Silva at Cerro Gordo?

A. About sixteen years.

Q. How long is it since you last knew him at Cerro Gordo?

A. I knew him there about three years while I was there.

Q. How long is it since you last knew of him there—thirteen years?

A. Yes, sir.

Q. It was the first three years of your acquaintance with him that you knew him at Cerro Gordo?

A. Yes, sir.

Q. Did you have any business relations or any intimate acquaintance with him?

A. Nothing, only little small dealings.

Q. In what respects?

A. From the lake I used to take him up things once in awhile.

Q. Did the man have any reputation there of any kind; is it not the fact that he was simply mining there and no one knew anything about him or said anything about him, as far as you know?

A. All I have seen is Frank Silva was a good fellow.

853 Q. So far as the community was concerned, did you ever hear any one say anything about him one way or the other?

A. Nothing, only that Frank was a good fellow.

Q. Did you ever hear any one say anything about him one way or the other?

A. I do not know about that.

Q. You do not pretend to look back sixteen years and say what you might have heard?

A. No, sir.

Q. What you have spoken of here is simply your own impression of the man?

A. Yes, sir.

Q. And seeing him occasionally?

A. Yes, sir.

Q. And knowing he was working and mining in the camp?

A. Yes, sir.

Q. What you say is simply your own impression of the man?

A. Yes, sir.

Q. There are lots of men in the world whom you have never heard anything about?

A. I should think so.

Q. Silva stands in that position; that you never heard anything of him one way or the other?

A. I never heard much of him. I might have heard of him and might not; I do not recollect.

Q. You do not recollect hearing anything about him from the people in the community?

A. I have heard him spoken of.

Q. You said you could not recollect whether you heard anything about him or not. Let us be frank. Tell me what you know, and what you do not know leave alone.

A. You hear about men all the time.

Q. I am not asking about that. I ask you if you can look 854 back 13 or 14 years and recall any statement made by any citizen of Cerro Gordo about Frank Silva.

A. I cannot.

Q. Have you talked about and repeated the substance of anything that you heard about Frank Silva?

A. No; I would not undertake to do it.

Q. You would not undertake to say you ever heard anything about Silva any more than you heard about thousands of men in the world that you do not know?

A. Yes, sir.

Q. That is your statement?

A. Yes, sir.

Q. He was a miner and you knew him as a miner?

A. Yes, sir.

Q. And had no occasion to talk about him one way or the other; he was not a man that made a reputation one way or the other?

A. No, sir.

Q. Where did you next know him?

A. I saw him at Darwin.

Q. How many years intervened between the time when you last knew him at Cerro Gordo and the first time that you knew him at Darwin?

A. It was when Darwin was first going up.

Q. What year would that be? Darwin was not started until 1875.

A. I guess it was about 1876 when I knew him there.

Q. How many times have you met Frank Silva in Darwin since 1876?

A. I could not tell you.

Q. How many times have you been there?

A. Quite a number of times.

855 Q. Did you ever live there?

A. No, sir.

Q. All you know about Darwin is driving in with a team or buggy and driving out again?

A. Yes, sir.

Q. Just going there for hire or for business that would detain you a few hours in town?

A. That is all.

Q. Did you ever hear prior to February, 1884, Frank Silva's name mentioned one way or the other; and, if so, by whom?

A. I could not tell you that.

Q. During those years did you ever know anything about Frank Silva, or was your attention attracted to him in any way until the sale of this Stirling mine?

A. Not particularly; no, sir.

Q. You paid no attention to him one way or the other, and it is only the fact of his having a dispute with the Southern Development Company and Mr. Yerington that first attracted your attention to him?

A. Yes, particularly.

Q. Then there was a period of three years that you never heard of Silva at all—that is, from the time you left Cerro Gordo until the time you knew him in Darwin, which would be three years. That would account for the sixteen years?

A. About that.

Q. The fact is, as I understand, you never heard a word about Silva one way or the other until the sale of this Stirling mine?

A. Not anything particular.

Q. It may be, for aught you know, that Mr. Silva bears the repu-

tation in Darwin, and has, for the last two years or more, of being dishonest in the matter of paying his debts and keeping his contracts; is not that so?

856 (Objected to by respondent as not being cross-examination, no examination having been had on the subject-matter of the last two years, and as being irrelevant, immaterial, and incompetent.)

A. I do not know anything about his paying his debts.
Q. At any time?
A. No, sir.
Q. You do not know whether he has acted honestly in the matter of paying his debts or not?
A. I never heard of it.
Q. You do not know anything about it?
A. No, sir.
Q. He may bear the reputation of being dishonest in that particular, so far as you know?
A. I do not know anything about that.
Q. You say you knew him up here. Did Silva ever reside in Independence, to your knowledge?
A. I have seen him here.
Q. I ask you if he ever resided here?
A. No, sir.
Q. Do you know whether he had any reputation at all at this point?
A. I only know the general opinion.
Q. I mean prior to this transaction of the Stirling mine. Do you know whether he had any reputation or not at this place?
A. At this place?
Q. Yes, sir.
A. I do not know nothing about what he had here. I have just seen him up here and go about his business.
Q. That has been the way, all the way through, of your acquaintance with him?
A. That is all.

857 Q. He is a man you knew nothing about, except you would recognize him when you saw him?
A. When I had a little business with him it was all straight.

Q. That is all you know about him?
A. Yes, sir.
Q. You do not know anything about him in the particular locality he lived in, so far as paying his debts—or like that?
A. I do not know anything about that.
Q. And you do not know whether he is honest or dishonest there?
A. No, sir.

Redirect examination:

Mr. MINER:

Q. You stated to counsel that prior to the sale of the Stirling mine you had not heard Frank Silva's character spoken about by the community?

(Objected to by complainant as not re-examination.)

A. I heard him spoken of.

Mr. REDDY:

Q. Mind, before 1884—before the sale of the Stirling mine?
A. I knew him in Cerro Gordo.

Mr. MINER:

Q. Since you first met Frank Silva in Darwin, up to the time of the sale of the Stirling mine in 1884, did you hear the people in the community where he lived in Darwin speak of his general character for truth and honesty?

(Objected to by complainant on the ground that it is not re-examination.)

A. Before the Stirling mine was sold?

Q. Yes, sir.

858 A. I never heard them say anything.

Q. Did you ever hear his general character discussed in any way?

(Objected to by complainant as not re-examination, and because it does not limit the inquiry to a time prior to the dispute between the respondent and the complainant in this action.)

Q. Prior to the sale of this mine by Mr. Silva in 1884, did you ever hear Silva's general character and reputation for honesty spoken of in the community where he resided in Darwin?

(Objected to by complainant as not re-examination.)

A. I do not know as I ever did; I do not remember anything about it.

Q. Prior to 1884 and the sale of the Stirling mine, did you ever hear Silva's general reputation for truth, honesty, and integrity questioned in that community?

(Same objection by complainant; and, further, that the ground has been gone over by the counsel in his examination-in-chief.)

A. I could not say whether I heard of it or not, any more than outside talk.

Q. That is what I want to know.

Mr. REDDY: Remember, before 1884 and before the sale of this mine, not since.

A. It is too far back to remember any such thing as that.

Mr. MINER:

Q. Two years, about, is the time. Before two years ago—
859 before this dispute—did you hear his character questioned for truth, honesty, and integrity?

A. I don't think I did.

Q. Do you know what is the general reputation of a man?

A. General reputation is whether he is good or whether he is bad; whether he is dishonest or any such thing as that.

Q. Prior to the sale of this mine did you know what Frank Silva's general reputation was for truth and honesty and fair dealing and integrity in the community in which he lived?

(Objected to by complainant as not re-examination.)

A. I never heard anything against him.

Recross-examination:

Mr. REDDY:

Q. Did you live in Darwin prior to 1884, where Silva lived?

A. I never lived there.

Q. Then you do not know whether he had a good or bad reputation in that town?

A. I do not know anything about it.

Q. So in Cerro Gordo you know nothing about him one way or the other?

A. Just when I see him I would pass the morning to him.

(Signed) O. I. MAIRS.

860 DANIEL CROUGH, a witness on behalf of respondent, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.

A. Daniel Crough; age, 30; residence, Independence, Inyo county, California; occupation at present, deputy assessor.

Q. Did you occupy any official position in Inyo county, California in the year 1884? If so, state what it was.

A. In 1884 I was under sheriff of this county.

Q. Are you acquainted with the defendant in this action, Frank Silva?

A. I am now.

Q. Did you know him in the year 1884?

A. I did.

Q. State if you arrested Silva during that year and the circumstances of the arrest, and whether you had any conversation with H. M. Yerington, the then president of the Southern Development Company, in regard to such arrest?

(Objected to by complainant on the ground it is a compound question, inquiring for statements made both by the complainant's representatives and by the respondent himself; that the two should be separted, so that the objection can be taken down properly, and

that it calls for statements made by respondent which may be self-serving, and as being irrelevant.)

A. I received the warrant of arrest, I think, on the 7th day of May, 1884, about one o'clock. I think it was given to me by Judge Conklin. Mr. Yerington was present in the office at the
861 time Judge Conklin was there. He said, "You take this warrant; go and arrest Silva. Try to be at Keeler to-morrow night if you possibly can. We will be there and meet you. Tell Frank that I guess we can fix it up there so that you can let him go." I told Mr. Yerington that I did not think that was any way of doing business; that to make the sheriff's mileage complete I should have to return him before a magistrate, or something to that effect, to make returns upon my warrant. He then spoke to me something about starting out in a hurry.

Q. Did you have any further conversation with Mr. Yerington on that day and prior to the arrest?

(Objected to by complainant as immaterial and irrelevant.)

A. On the day I received the warrant—before I left—I did. He said, "We have come to a different conclusion. You arrest Silva, bring him up to Keeler, and you need not state anything about fixing it up there," or words to that effect.

Q. Was that all the conversation at that particular time?

A. I think that is the gist of it.

Q. Look at this paper and see if that is the warrant of arrest which was placed in your hands on May 7th, 1884, as you have testified to?

(Objected to by complainant as irrelevant, incompetent, and immaterial.)

A. I am pretty certain that is the warrant, because I recognize my own handwriting.

862 Mr. MINER: I offer the warrant in evidence as being a record of the superior court of Inyo county and having been identified by the witness as a warrant under which he acted on the occasion referred to.

Mr. REDDY: We object to it on the ground that it is irrelevant, immaterial, and incompetent.

Mr. MINER: As this is on file in the records of the court I will ask the examiner to take a copy of this paper.

Mr. REDDY: We object to a copy being introduced in the record for the reason that it is irrelevant, immaterial, and incompetent.

(The paper referred to is as follows:)

"In the Justice's Court of Third Township, in the County of Inyo, State of California.

"The people of the State of California to any sheriff, marshal, constable, or policeman of the county of Inyo:

"Information on oath having been this day laid before me by H. M. Yerington that the crime of obtaining money under false pretenses has been committed and accusing Frank Silva thereof, you are therefore commanded forthwith to arrest the above-named Frank Silva and bring him before me forthwith, at my office, in the town of Independence, in said township, in said county of
863 Inyo, or, in case of my absence or inability to act, before the nearest or most accessible magistrate in the county.

"Dated at Independence, in said township, in said county of Inyo, at the hour of 12 m., this 7th day of May, 1884.

"THOMAS PARKER,
"*Justice of the Peace of said Township.*

"I hereby certify that I received the within warrant on the 7th day of May, 1884, and served the said warrant by arresting the within-named defendant on the 8th day of May, 1884, and bringing him into court this 10th day of May, 1884.

"STEPHEN G. GREGG,
"*Sheriff of Inyo County,*
"By DANIEL CROUGH,
"*Under Sheriff.*

"The above-named defendant having been brought before me under this warrant and committed for examination to the sheriff of the county of Inyo.

"Dated this 10th day of May, 1884.

"THOMAS PARKER,
"*Justice of the Peace of said Township.*"

(Endorsed:) "No. —. Justice's court, third township, county of Inyo. The People of the State of California *vs.* Frank Silva. Filed ——, 1884. —— ——, justice of the peace of said township."

864 Q. Did you execute that warrant? If so, state in what manner.

(Objected to by counsel for complainant as incompetent, immaterial, and irrelevant.)

A. When I received the warrant I went down to Darwin that night. The next morning, about sunrise, I arrested Frank Silva, just as he was getting out of bed. I went to the house. I brought him to Keeler that day.

Q. Was Mr. Yerington at Keeler the day that you brought Silva there?

(Same objections by complainant.)

A. He was there. I probably neglected to say that Mr. Yerington said, "We will meet you at Keeler; if you can possibly do it, get Frank over there to-morrow night." I met Mr. Yerington there with Judge Conklin and somebody else; I do not know who it was. I did not pay much attention to him; it was some gentleman from Nevada.

Q. State if any conversation occurred in your presence between Mr. Yerington and Silva on the 8th day of May, at Keeler, and state what the conversation was.

(Same objection by complainant.)

A. The only conversation I heard was this: "You know those"——

Q. State who said that.

A. Mr. Yerington said, "You know that those drill holes were there." Frank replied, "I do not know anything of the kind." I went out of the door. I did not care to hear what they had
865 to say in regard to the business. The way I came to be there was that two ladies came and told me that Frank Silva had a gun or a weapon, or something, and told me to examine him. That is how I came to go in the room.

Q. As long as you have stated that, I will ask you if you did examine him?

A. Yes; I examined him and found no weapon upon him at all.

Q. After this conversation did you leave Keeler with the prisoner or not?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. I did. I left that evening.

866 Q. Did you hear any further conversation between Mr. Yerington and Silva after leaving Keeler on that day?

(Same objection by counsel for complainant.)

A. He asked Frank Silva to come into the car, or rather asked us both to come into the car; at the same time he gave us a cigar apiece.

Q. State where that was.

A. That was on the way from Keeler to Independence station, after we started out, probably six or seven miles. We were on a flat car.

Q. Go on with the conversation.

A. Frank replied that it was better out here. Mr. Yerington came out, sat down, and talked with Frank for quite awhile. I removed to the other end of the car, and did not pay any atttention to their conversation at all.

Q. What is the distance from Keeler to Independence station on this railroad that you were riding on at that time—about?

(Same objection by counsel for complainant.)

A. I should think about 23 or 24 or 25 miles. I do not know exactly.

Q. I want to know whether it is a million miles or one. You can give an idea.

A. I know the mileage was 32 miles by the way of the road from here to Keeler. That was the sheriff's mileage that we used to charge. I think it was about 25 miles.

Q. When you arrived at Independence station did you hear any further conversation between Mr. Yerington and Silva?

(Same objection by counsel for complainant, and, further,
867 that the question is leading.)

A. I heard a conversation.

Q. State it.

A. When Frank Silva got off the car he came round on the porch. I said, "Are you ready to go, Frank?" Mr. Yerington said: "One word more; there is this I have got to tell you before I leave: You know that those drill holes were there." Frank replied, "I don't know anything of the damn kind," or something to that effect. Mr. Yerington said: "But you do know that I have put over three thousand dollars' worth of improvements on that mine, and you had better take the mine back and give me my seventy-five hundred dollars, or I will send you to the penitentiary for ten years" or "across the bay for ten years," or something of that kind.

(Counsel for complainant moves to strike out what the witness has said as "something of that kind," and asks that the witness state what was said, if he knows.)

A. I think he said "penitentiary."

Mr. REDDY: If you know what was said, please state it.

A. I would not remember every word.

Mr. MINER: Finish the conversation, if you have not already finished it.

A. I think that was pretty near all that was said there.

Q. What did Silva reply?

A. Silva replied, "You go ahead;" something in that way; "You go right ahead."

Q. I will ask you whether at the station at Keeler you heard Mr. Yerington make any proposition to Silva in the nature of
868 a compromise? If so, state what it was.

(Objected to by counsel for complainant on the ground that it is incompetent, immaterial, and irrelevant, suggestive, leading, and calls for a conclusion of the witness as to whether an offer of compromise was made or not.)

A. Not between Silva and Yerington at all. I did not hear any compromise between them at all. Frank told me what they said.

(Objected to by complainant as hearsay.)

Q. I do not care about that. You say you are not positive exactly of the words Mr. Yerington used about "penitentiary" or "across the bay." Are you positive that Mr. Yerington used the words "send you to" either "the penitentiary" or "across the bay?" Are you positive of one or other of those expressions?

(Objected to by complainant as leading, suggestive, putting words into the witness' mouth, and incompetent, immaterial, and irrelevant.)

A. I heard him say something about "sending" and "for ten years." I think it was the penitentiary.

(Counsel for the complainant moves to strike out the answer on the ground that it is immaterial and irrelevant.)

Q. Then the portion you are not certain about is this: The expression "penitentiary" or "across the bay?" Those are the two things you are not positive about.

(Objected to on the ground that it is incompetent, irrele-
869 vant, and immaterial, leading and suggests to the witness the words which he wishes him to affirm.)

A. I think he said "penitentiary."

(Counsel for complainant moves to strike out the answer on the ground that the witness testifies to what he does not have actual knowledge of.)

Q. Do you know positively that he did say one or the other of those two things?

(Objected to by complainant as leading, putting words in the witness' mouth, and is incompetent, irrelevant, and immaterial.)

A. Yes.

Q. But the doubt with you is you do not know which one he did use?

(Objected to by complainant as leading and putting statements into the mouth of the witness.)

A. That is it. It is like any other conversation that I hear. I did not pay great attention to the exact words. That is the idea.

Cross-examination by Mr. REDDY:

Q. I understand you to say you heard a conversation between Mr. Yerington and Silva at Keeler—that is to say, you heard part of a conversation?

A. Yes, sir.

Q. You stepped up to where they were conversing long enough to hear Mr. Yerington say to Silva, "You know you put those drill holes there," and to hear Silva say, "I know nothing of the kind." What preceded that or what succeeded it you do not know?

A. No.

870 Q. They were conversing when you entered?

A. Yes; they were in the office.

Q. And conversing when you left?

A. Yes, sir.

Q. That is all you heard of the entire conversation?

A. Yes, sir.

(Counsel for complainant moves to strike out the statement of the witness as to that conversation from the fact that he heard nothing but a portion of it.)

A. I did not care about knowing their business and went outside.

Q. How long is it since you first heard that conversation?

A. It was on the 8th of May.

Q. What year?

A. 1884.

Q. Have you repeated that conversation with Mr. Silva since?

A. Never.

Q. Did you ever inform any one that you heard those words before you repeated them here?

A. Yes; I think I have.

Q. Who did you inform?

A. I think I told Mr. Miner.

Q. How long since; about the time?

A. About what time have you reference to?

Q. About the time of the preliminary examination.

A. Yes; I think I told him then what I heard, and also since.

Q. Did you ever talk with Silva about this matter at all—about this conversation?

A. Not at all.

Q. State whether Mr. Miner ever told you what Mr. Silva
871 understood of that conversation.

A. Never, that I know of.

Q. Have you frequently conversed with Mr. Miner about this conversation, what you know about this matter; I mean Mr. Miner who is the attorney in this case?

A. I think I have talked to him a few times—that is, he came and talked to me. I never sought any conversation with him at all in any way.

Q. About this sending to the penitentiary, can you remember the words used by Mr. Yerington or the reply made by Silva?

A. I am pretty certain that he said, "I will send you to the penitentiary" or "One word more before I leave; if you do not accept this proposition I will make trouble for you and send you to the penitentiary for ten years," or something to that effect, and Frank replied, "Go on."

Q. You have a very distinct recollection of that?

A. It is just like any other conversation, so far as that is concerned. I did not lay any particular stress on that thing at all; I did not care. It was none of my business. In my official capacity as under sheriff I did not want to know anything about the merits and demerits of the case and cared less.

Q. Can you repeat the question I have just put to you?

A. I think pretty nearly.

Q. Let us hear you do it.

A. You asked me if I distinctly understood what was said at the depot or if I distinctly understood the conversation at the depot.

872 Q. Be kind enough, Mr. Examiner, to read the question to the witness.

(The examiner reads the question as follows: "Q. About this sending to the penitentiary, can you remember the words used by Mr. Yerington or the reply made by Silva?")

A. I answered that question.

Q. No; you did not.

A. Will you read the question?

Q. Do not you remember the question I put to you a few minutes ago and which has been again read to you by the examiner?

A. I would like my answer read as well.

Q. I would like to ask you this second question: Do you not remember the question which I put to you a few moments ago and which was but a moment ago read to you by the examiner; do you remember it?

A. Something in regard to the exact words in sending to the penitentiary?

Q. Notice the question I am putting to you. Do you remember the question?

A. Yes; I remember the substance of it.

Q. Be kind enough to repeat what the principal question was that I put to you a few moments ago and which the examiner read to you.

A. In regard to the exact words that were used in regard to sending him to the penitentiary?

Q. What was my principal question to you a few moments ago and the one repeated to you by the examiner; will you please state what that question was?

873 A. I do not know your exact words.

Q. Let us see how near you can come to it. Repeat my question as far as you can.

A. "Do you know the exact words that were used by Mr. Yerington in regard to sending Silva to the penitentiary." That is as close as I can get to it.

Q. That is as near as you can get to it?

A. Yes, sir.

Q. Now read the question, Mr. Examiner.

(The examiner reads the question as follows: "Q. About this sending to the penitentiary, can you remember the words used by Mr. Yerington or the reply made by Silva?")

A. I have answered that question three times.

Q. Answer it again.

A. "There is one thing more that I have to say before I go"——

Q. That is not the question I put to you at all. I have not asked you to repeat what Mr. Yerington said. You do not understand the question put. Read the question again, Mr. Examiner?

(The examiner reads the question as follows: "Q. About this sending to the penitentiary, can you remember the words used by Mr. Yerington or the reply made by Silva?")

A. I would not be certain in regard to the exact words of Mr. Yerington. I am very certain that Frank said, "You go ahead."

(Counsel for complainant moves to strike out what the witness has said was the language used by Mr. Yerington for the
874 reason that he said he would not be certain in regard to the exact words.)

Q. Were you present at the preliminary examination of this case?

A. Part of the time.

Q. You heard Mr. Yerington testify as to the conversation which took place between Mr. Silva and himself?

A. I think I heard very little of it.

Q. Did you hear what Mr. Yerington had to say about any of those conversations?

A. I do not think I did.

Q. Were you present at the time of the case of The People of the State of California against Frank Silva, in which he was charged with obtaining the money in this case by false and fraudulent representations?

A. Yes; most all the time.

Q. Were you acting as an officer of the court during the trial of that cause?

A. Yes, sir.

Q. You were under sheriff?

A. Yes, sir.

Q. Did you take charge of the jury in that case?

A. Yes; by your consent.

Q. I did not know at that time that you were a witness to this. It had not been disclosed.

Mr. MINER: The record shows he was put on the stand as a witness.

Mr. REDDY: You say you had charge of the jury during their deliberations and during the progress of the trial?

A. I had.

875 Q. You were in court during the time that the testimony was given on that trial as an officer?

A. More or less; not all the time, because Mr. Gregg was there part of the time.

Q. Did you hear Mr. Yerington's testimony read on that trial, which was taken at the preliminary examination?

A. I do not think I did.

Q. Did you hear Frank Silva testify upon that occasion?

A. A little part of it.

Q. Did you hear him testify with reference to the conversations between himself and Mr. Yerington?

A. Not that I recollect.

Q. You may have?

A. I may have.

Q. Is it not possible that you received the impressions which you now entertain from the testimony which you heard from Mr. Silva

on that occasion, or that they may have affected your recollection of the real facts, it being some two years since Mr. Silva was tried or nearly two years, a year and a half anyway?

A. The conversation that I had at the depot was only just as I testified to, just a little disconnected, and I did not pay attention to anything else and never had any conversation with Silva at all or talked up the case with him in the world.

Q. Do you recollect the last question that I put to you?

A. In regard to the conversation?

Q. Do you remember the question I have just now put to you?

A. Yes; I remember the substance of it.

Q. What is it?

876 A. When I heard his testimony, if it had any effect upon my mind in regard to testifying.

Q. No; I will ask the examiner to read the question again.

(The examiner reads the question as follows:)

"Q. Is it not possible that you received the impressions which you now entertain from the testimony which you heard from Mr. Silva on that occasion or that they may have affected your recollection of the real facts, it being some two years since Mr. Silva was tried or nearly two years, a year and a half anyway?"

The point of my question is this: Whether or not the impressions you now have on your mind as to what was said by Silva to Mr. Yerington or Yerington to Silva on those several occasions to which you have referred were created or affected by hearing Mr. Silva's testimony in the trial of the case of The People of the State of California against Frank Silva?

A. I do not think that Mr. Silva or any one else's testimony could affect me in the least.

Q. I mean it helped to create or affect the impressions which you now have?

A. I do not think it did.

Q. Did you testify on the trial of the case last alluded to as to the conversations which you have testified to here?

A. I do not think I did.

Q. Do not you know that you did not?

A. I am morally certain that I did not.

Q. Do you know that you did not testify as to hearing

877 those conversations either at the preliminary examination of Mr. Silva or on the trial of the case alluded to?

(Objected to by respondent on the ground that the records of the court and the proceedings in the case are the best evidence. This is secondary evidence, and if it is for the purpose of impeaching the witness the writing should be shown to the witness and he be allowed to explain.)

Mr. REDDY: I have no such intention of impeaching the witness. If I have a desire of that kind I will make it known. I object to counsel imputing motives of that kind to me. I entertain high re-

gard for the witness, and am not attempting or intending to impeach him.

A. I am pretty certain I did not.

Q. You were present during all the trial?

A. Not all.

Q. Mr. Miner has been informed by you, as I understand, at about the time the preliminary examination took place you knew these facts?

A. What facts?

Q. That you had heard these conversations.

A. Yes; he asked me about it.

Q. Yet you gave no such testimony at the preliminary examination or at the trial?

A. No; I think not.

Q. Have you expressed any sympathy with Mr. Silva in this litigation between himself and the Southern Development Company?

A. Not that I know of.

Q. Have you not expressed your opinion as to the merits of the former trial, the one alluded to above, and of the present litigation?

A. In regard to the former trial I said I thought that Silva
878 would get away with it; that is about all.

Q. Did you state what your wishes were in the matter; whether he should get away with it?

A. Not particularly.

Q. Did you in any manner, general or particular?

A. Not that I remember.

Q. You may have done so?

A. Probably I said I wished Silva would win. I do not remember.

Q. If you did it was because that was the condition of your mind which would permit such an expression; your mind would permit it?

A. I think it would.

Q. You were strongly biased in favor of Silva?

A. I was not biased at all in regard to it.

Q. If you understand the meaning of that word you would see it is not very offensive. Did you not desire to see Mr. Silva acquitted on the former trial?

A. I did not care whether he was or not.

Q. You desired to see him succeed?

A. Not any more than I would any other man.

Q. Did you not just say you might have expressed the wish for Silva's acquittal?

A. I thought he would get away with the case, not that I wished it.

Q. I asked you if you did wish he would succeed?

A. I do not know that I did.

Q. What did you say a moment ago?

A. I would like the examiner to read it if I said that.

(The examiner reads.)

Q. Did you not say that you wished Silva would win?

879 A. I do not think I did.

Q. Do you mean to say that the examiner has got your testimony down wrong?

A. You asked the condition of my mind; in regard to the condition of my mind I might think he was right.

Q. Then you wish him to win?

A. No particular desire in regard to wishing him to win.

Q. Did you not state above there that you had a desire he should win?

A. I think your question was as to the condition of my mind in regard to wishing, not of any expression that I gave rise to whatever in regard to the matter, because I do not care whether he wins or loses it; it is immaterial to me.

Q. I simply ask you as to the condition of your mind. Did you not say that you wished Silva would win?

A. Did I not say it?

Q. Did you not say so just now, that you wished he would win?

A. That was not my intent, that I wished he would win; I might have said so.

Q. If you did it was the honest expression of your feeling at that time?

A. If I said so I guess it emanates from the mind, and it is my thoughts in regard to the matter, if I said anything; I did not straddle the question.

Q. I ask you now if it was not the honest expression of your feeling, if you did say so?

A. I will put in a big "if" there; if I did say so, I said what I meant, and I meant what I said.

880 Q. Have your feelings changed any since that time, if you did give vent to such expression or make use of such expression?

A. So far as that is concerned——

Q. Please answer the question.

A. My feelings are exactly the same, so far as that is concerned. I do not care whether Frank Silva wins the case or whether he loses it; it is immaterial to me, Mr. Reddy; I do not care.

Q. Have you ever discussed the merits of this case in this town?

A. I think, sitting round, I have heard it talked over; I have not discussed it particularly.

Q. I asked if you have discussed the merits of this case or litigation, either in particular or in general?

A. I think I have probably chipped in, as they call it, some time in the conversation.

Q. On which side did you chip in?

A. I do not know; I have chipped sometimes on both sides.

Q. Did you straddle the question?

A. Not exactly.

Q. Which side were you upholding? I understood you to say that you would not straddle the question. I now use your expression. Did you straddle the question?

A. The question in general I did not straddle; I leaned to Frank Silva's side.

Q. You leaned to his side all the way through?

A. In general.

Q. Your feelings in general have been with Frank Silva from beginning to end?

A. Yes; to a certain extent.

881 Q. How strong has your general feeling run in that direction; has it not run strong enough that you should desire Mr. Silva to win?

A. I do not care whether he wins or not.

Q. If you have espoused his side of the case and argued and chipped in is it not the fact that it was because you wished him to win?

A. I did not testify that I argued it at all.

Q. Did you not discuss it?

A. No; not particularly, either.

Q. Have you not said that you discussed the question and chipped in? Maybe I misunderstood you. What do you mean by chipping in; do you mean to say that you contributed money or anything of that kind to his cause?

A. Not at all.

Q. What do you mean by chipping in? Give us the definition of what you mean by chipping in.

A. Putting in a word once in a while.

Q. On which side?

A. Most on Silva's side.

Q. Could a single word be understood by those that you talked to; did you not enter into a discussion of it and make a clear statement of your views of the merits of the case?

A. I do not know that I did.

Q. Was it because you were unable to make a clear statement of it or what; did you not do the best you could to make a clear statement?

882 (Objected to by respondent as irrelevant, immaterial, and incompetent, and that the subject-matter of the question has been pursued at length, and this is but a repetition of other questions and is taking up time unnecessarily.)

Q. How often have you chipped in on the subject of the merits of this case?

A. I do not know how often; I did not pay attention.

Q. Would it amount to quite a number of times?

(Same objection by respondent.)

A. I guess it would.

Q. When did you first begin chipping in and discussing this question?

(Same objection by respondent.)

A. I do not know.

Q. As soon as it became a topic of public comment or discussion?
A. I presume.
Q. Then you had discussed it quite frequently before the trial of Silva in the case of The People against Silva?

(Same objection by respondent.)

A. No; not much.
Q. You had discussed it somewhat before that?
A. No; I will tell you the reason I did not—because I did not want to have anything to say in regard to it in summoning the jurymen.
Q. You had the feeling, all the same, which you afterwards expressed?

(Same objection by respondent.)

A. I cannot say I felt particularly.

Q. You had the same feeling, but unexpressed. You had
883 the opinion before the trial which you expressed after the trial?

(Same objection by respondent.)

A. I heard but one side of the case at that time.
Q. You had an opinion before the trial?

(Same objection by respondent.)

A. I certainly had an opinion.
Q. And the opinion which you expressed after the trial was just like the one you had formed before?

(Same objection by respondent.)

A. Yes, sir.
Q. You have talked with a number of citizens in this county, have you not, about this litigation, on different occasions?
A. Yes, sir.
Q. You have assisted in forming the opinion which the public seem now to entertain—the general public opinion?
A. I do not know what you would call assisting.
Q. I mean by discussing and expressing your views of the matter.
A. I have not expressed my views much in regard to it.
Q. Not at all? I understood you to say you chipped in.
A. Not much.
Q. As far as you thought it advisable you assisted in forming public opinion on this question?
A. I had no desire to shape public opinion.
Q. That is not what I asked you. Answer my first question, and then I will come to that.

A. It may have shaped public opinion.
884 Q. You desired that that public opinion should be favorable to Silva?
A. I cannot see what good it would do him if I wanted to assist him. I was not laboring to assist him.

Q. That is not my question. I will ask you if you have not designedly assisted in forming public opinion on this question?

A. I may have formed public opinion, but not designedly with any regard to the issues in this case.

Q. You have travelled extensively in the county among the people?

A. A good deal.

Q. As an officer?

A. Yes, sir.

Q. And in doing your work in the county as a public officer, travelling from place to place, you have discussed this question at various points?

A. I might have discussed it once or twice.

Q. Have you not, in every community that you have been in, given expression to your views in every settlement in the county?

A. No.

Re-examination:

By Mr. MINER:

Q. Do you know whether there is in this county any public opinion in regard to this case at all?

A. No; not particularly, that I know of.

Q. If there is such an opinion——

(Objected to by complainant on the ground that the witness has answered there is none that he knows of.)

A. Not that I know of. I do not know of any public opinion.

Q. If any exists, do you know whether it exists by reason of the facts in this case or from outside talk?

885 (Objected to by complainant as immaterial and irrelevant, not in cross-examination, because the witness has already stated that he knows nothing about it, and therefore the question is leading and suggestive.)

A. I have heard talk, of course.

Q. Was that talk occasioned by the facts of the case or not; do you know what occasioned that talk; what was the foundation of it?

A. Well, so far as I know, the foundation, of course, was the testimony here in court.

(Counsel for complainant moves to strike out the answer on the ground that the witness said so far as he knows, when he said he knows nothing about it; therefore it is not competent testimony.)

Q. You stated in answer to counsel's question that you were not certain of the language used by Mr. Yerington in the conversation you have testified to; what do you mean by not being certain of it; do you mean in regard to the exact words used?

(Objected to by complainant on the ground that it is not in re-examination; counsel has examined the witness on the matter in chief, and that the question is leading and puts words into the witness' mouth.)

A. The words used by Mr. Yerington were to the effect, "I will send you to the penitentiary for ten years;" I do not know whether he said "penitentiary" or "across the bay;" it was to that effect, anyhow.

Q. Then the difficulty in the proposition, as I understand you, arose from whether he used the words "penitentiary" or "bay?"

886 (Objected to by complainant as not being re-examination; that the ground has been traveled over both in chief and in re-examination heretofore, and it is leading, suggestive, and puts words into the witness' mouth.)

A. That is the only thing; I only remember the import of the conversation, that he would be imprisoned for ten years; that he would be sent across the bay or sent to the penitentiary.

Q. Were you not sworn as a witness on the part of the defendant in this criminal action?

(Objected to by complainant as not being re-examination; he has already testified he was a witness in that case; that he did not give any testimony concerning this conversation.)

Q. State, if you know, why you did not give any evidence in regard to this conversation at that trial.

A. I think Mr. Reddy objected.

(Counsel for complainant moves to strike out the answer on the ground that it is not competent evidence. He is asked for his reasons, not what he thinks.)

Q. Have you ever been connected with the clerk's office of the superior court of Inyo county?

A. Yes, sir.

Q. In what capacity?

A. Deputy clerk for about seven years.

Q. At what time?

(Objected to by complainant as not being re-examination and as immaterial and irrelevant.)

887 A. From 1878 to the present time. I guess I am deputy clerk now.

Q. Will you please look at this book which I now show you and tell me what it is?

A. That is a book of the minutes of the superior court of Inyo county.

Q. The minute and order book of civil and criminal actions of the superior court of Inyo county, volume 2?

A. Yes.

Q. Do you know the penmanship of J. E. Parker, former deputy clerk of this county?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. I think I do. I have seen him write several times.

Q. Did Mr. J. E. Parker have any official position in this county during the year 1884? If so, state what it was.

(Objected to by complainant as incompetent, immaterial, and irrelevant, and that it is incompetent to prove the official — of James E. Parker in the manner proposed.)

A. He was deputy clerk, I think.

(Counsel for complainant moves to strike out the answer on the ground that the witness does not appear to have any knowledge of the facts, and simply testifies as to his thoughts.)

Mr. MINER: I now offer in connection with this witness' testimony a portion of the minute book showing the minutes.

Mr. REDDY: We object to your stating what the minutes show. They show for themselves.

Mr. MINER: Showing a portion of the minutes of Monday, November 24th, 1884, on page 92 of said book, in the case of
888 The People of the State of California against Frank Silva, the portion being as follows. I will read it.

Mr. REDDY: We object to it as immaterial and irrelevant and not in any manner connected with the subject upon which the witness has been questioned.

Mr. MINER (reading): "Dan'l Crough was called upon the part of defendant and duly sworn. Q. by Mr. Miner: Did you arrest the defendant in May of this year? Objected to by plaintiff. Answer. I did. Question by Mr. Miner: Whatever occurred between Mr. Frank Silva and Mr. Yerington at Keeler at the time you arrested him on this charge? Objected to by plaintiff. Objection sustained; to which defendant excepts."

Q. I will now ask you if you remember having been questioned in regard to the conversation between Mr. Yerington and Mr. Silva, and whether you answered the question in regard to that conversation during the criminal action of The People of the State of California against Frank Silva, which has been referred to in your evidence?

(Objected to by complainant as immaterial, irrelevant, and incompetent, the record having been introduced of what occurred; it is conclusive on that question.)

A. I had a conversation with you in regard to it.

Q. Read the question, Mr. Examiner.

(The examiner reads the question as follows: "Q. I will now ask you if you remember having been questioned in regard to the conversation between Mr. Yerington and Mr. Silva, and whether
889 you answered the question in regard to that conversation during the criminal action of The People of the State of California against Frank Silva, which has been referred to in your evidence?)

A. When I was on the stand? No.

Q. I was asking you if you were questioned.

A. When I was testifying, I mean. I do not think I said anything about the conversation. I am certain I did not.

Q. For what reason did you not speak about the conversation in that criminal trial in answer to questions put by me?

(Objected to by complainant on the ground that the witness' reasons for not testifying are wholly immaterial and irrelevant, and the record, having been introduced as to what occurred at that time in this connection, is conclusive if it touches this matter at all.)

A. I stated it was because it was objected to.

Q. Was the objection sustained?

(Objected to by complainant on the ground that the question puts words into the witness' mouth, is leading, immaterial, and irrelevant, and that the record shows what was done by the court with any question touching this matter.)

A. I think it was, because I should have gone on and answered the question if it was not.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question and that it is incompetent as testimony.)

Q. I will ask you if you remember whether you were allowed to give any testimony on that subject to the court during
890 that criminal action at that time?

(Objected to by complainant on the ground that it is immaterial, irrelevant; that counsel has introduced the record of the court to show what was done in the matter, and that is conclusive and cannot be contradicted by the witness, and also that the proceedings of the court were taken down in short-hand, the evidence of each witness and objections thereto, and that the record so made is the best evidence of what occurred.)

A. I was not allowed to testify in regard to the conversation.

Recross-examination by Mr. REDDY:

Q. Are you positive that you were asked to state any conversation which you may have heard between Mr. Yerington and Mr. Silva at Keeler when you brought him under arrest from Darwin to that point?

A. In the criminal case?

Q. Yes. Remember the question on the record; do not be misled about that. You see you were not asked to state any conversation by Mr. Miner; you were asked to state what occurred, which were the acts of the parties, and not a conversation. I ask you are you sure whether any question was put to you by Mr. Miner as to any conversation you may have heard between the parties named?

(Objected to by the respondent on the ground that counsel suggests that the question referred to in the minutes of the court refers to the acts between the parties when the question commences
891 with the words "Whatever occurred.")

Q. My question is, Are you positive that you were questioned as to a conversation between Mr. Silva and Mr. Yerington on the trial of the case of The People of the State of California *vs.* Frank Silva?

A. I am not certain.

Q. You do not know whether you were questioned about the conversation or not?

A. Not in regard to the conversation particularly. "What took place," or something of that kind. "What transpired," or "what took place," or "go on and state what happened there."

(A recess was here taken until 2 o'clock.)

Afternoon Session.

DANIEL CROUGH recalled for re-examination.

Mr. MINER:

Q. Since we adjourned this morning have you considered what questions were asked you on the criminal trial of The People of the State of California against Silva in the year 1884?

(Objected to by complainant as immaterial and incompetent.)

A. I have.

Q. Now, then, do you recollect whether you were asked any questions in regard to the conversation which took place between Mr. Yerington and Mr. Silva, at Keeler, on the 8th day of November, 1884, at the time you arrested him?

892 (Objected to by complainant as immaterial, irrelevant, and incompetent, not in re-examination. The questions concerning his knowledge of that matter have already been put to the witness, both in chief, cross, and redirect.)

A. There were several questions asked me which I did not answer. I would not swear, though, that they were in regard to a conversation; as they were objected to I did not pay much attention to them. I think, though, it was in regard to a conversation.

Recross-examination:

By Mr. REDDY:

Q. Inasmuch as you did not pay any attention to it, do you know whether it was in regard to a conversation or not?

A. I said I did not pay much attention to it.

Q. In view of that fact, do you know whether you were questioned about a conversation or not?

A. I stated I could not swear to that fact.

Q. Do you know?

A. Not positively.

Q. Do you know at all?

A. I think so.

Q. You know what you know and what you think are two different things. You recognize the difference between knowledge and thinking?

A. I do.

Q. I ask you if you know?

A. I do not know it for certain.

Q. I ask you if you know; you either know it or do not know it. I ask you whether you know it or not?

A. I think I know it.

893 (Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. I repeat my question, Do you or not know it?

A. That is, morally I know it.

Q. I ask you now the simple question without equivocation, either through morals or anything. Do you or do you not know it; you are a school teacher, are you not?

A. Yes.

Q. You know the meaning of the English language pretty thoroughly. I am satisfied of that. I ask you the plain question in English, Do you or do you not know it? I ask you now for your knowledge?

A. I would not swear.

Q. That is not an answer to my question. Do you or do you not know it?

A. I cannot say that I do know it.

(Signed) DANIEL CROUGH.

894 CHARLES ANTHONY, a witness called for respondent, sworn.

Mr. MINER:

Q. State your name, age, occupation, and place of residence.

A. My name is Charles Anthony; age, 52; occupation, merchant; residence, Darwin.

Q. Are you acquainted with Frank Silva, the defendant in this action?

A. Yes.

Q. How long have you known him?

A. I should judge about 8 years.

Q. Where have you known him for eight years?

A. About Darwin.

Q. In what county and State?

A. Inyo county, State of California.

Q. What occupation has Mr. Silva had during that time that you know of?

(Objected to by complainant as immaterial and irrelevant.)

A. He has been prospecting.

Q. Are you acquainted with or know the general reputation which Frank Silva had in Darwin during the time that you knew him up

to the commencement of the criminal action against him on May the 7th, 1884, for truth, honesty, and integrity?

(Objected to by complainant as incompetent, irrelevant, and immaterial, because the reputation of Silva prior to the sale of the Stirling mine is inquired of.)

A. Yes; I know it.

Q. What was it?

895 A. As far as I know myself—as far as the business that I have had to do with him—I never heard anything to the contrary, but what it was good.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question, and that it is incompetent.)

Q. I want to know what character he bore in the community, during the time stated, for truth, honesty, and integrity. I do not want to know your private or individual opinion of him, but what the community, as a community, considered about that matter, and what his character was as a man for truth, honesty, and integrity in that community. Was it good or bad?

(Objected to by complainant on the ground that the witness has not stated he knew his reputation, as inquired of by counsel, and that it is irrelevant, immaterial, and incompetent.)

A. It is good.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question; the question inquires whether the witness knows or not what the reputation was; further objected to upon the ground that he is not limited to a period of time preceding the sale of the Stirling mine and the acts complained of.)

Q. Preceding the 7th day of May, 1884, for how many years had you known Frank Silva at Darwin and about Darwin?

(Objected to by complainant on the ground that it is immaterial and irrelevant, and that it is not limited to time preceding the acts complained of.)

896 A. It is good.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. Read the question, Mr. Examiner.

(The examiner reads the question as follows:)

"Q. Preceding the 7th day of May, 1884, for how many years had you known Frank Silva at Darwin and about Darwin?"

A. About 8 years, I should judge.

Q. Preceding that time—May, 1884?

A. Yes; I should think it was about that.

Q. You have known him 8 years before 1884?

A. No.

Q. That is what I am asking you. How many years before 1884 did you know Silva?

A. I do not know as I knew him before he came to Darwin.

Q. Before the year 1884 how many years had you known him?

A. Before 1884 I had known him about 7 years.

Q. Up to 1884?

A. Yes, sir.

Q. Up to 1884?

A. Yes, sir.

Q. Where had you known him during those 7 years?

A. He had been in and about Darwin.

Q. Did you see him frequently during that time?

(Objected to by complainant as immaterial and irrelevant.)

A. Yes, sir.

Q. How large a place is Darwin and was it during that time?

897 (Objected to by complainant on the ground that it is incompetent, irrelevant, and immaterial.)

A. I could not say what the amount of inhabitants was at that time—quite a large place. Seven years ago there might have been a thousand population.

Q. What is the population at the present time?

(Objected to by complainant as irrelevant, incompetent, and immaterial.)

A. I should judge not over twenty-five or thirty or forty.

Q. Has it been much more than twenty-five or thirty for the last three or four years?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. At times there were more.

Q. State what time and when did it commence to decline.

(Same objection by complainant.)

A. I could not tell.

Q. Seven years ago you say there were about one thousand inhabitants?

A. I should judge so.

Q. How many were there six yeare ago?

(Same objection by complainant.)

A. There were not many more than there are now.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. What was about the populaton of Darwin about six years ago?

(Objected to by complainant as irrelevant, incompetent, —.)

898 A. I could not say.

Q. About. Have not you any idea?

(Objected to by complainant as leading, prompting, suggestive, and filling the witness' mouth with words.)

A. There might have been two hundred.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive.)

Q. What was the population, in your judgment and estimation, five years ago?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. About the same.
Q. About what?
A. The same as it was the year before.
Q. Mention some number.

(Objected to by complainant as urging, leading, and suggestive.)

A. I could not mention the number.
Q. Please mention, in your judgment and estimation, what the population was five years ago. This is not positive.

(Objected to by complainant as incompetent, irrelevant, and immaterial.)

A. Probably about one hundred.
Q. What was the population of that place, in your judgment and estimation, about four years ago?

(Objected to as incompetent, irrelevant, and immaterial.)

A. It might have been about 50.
Q. What, in your judgment, was the population of that
899 place about three years ago?

(Same objection by complainant as before.)

A. About the same as the year before.
Q. What kind of a town is Darwin, an agricultural suburb or a railway station?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. There is a little sage bush and horned toads growing there.
Q. What kind of a town is it. Is it a mining town?

(Objected to by complainant as immaterial and irrelevant.)

A. Yes, sir; it is a mining town.
Q. What kind of a neighborhood is it about Darwin? In what are the people generally engaged?

(Objected — by counsel for complainant as irrelevant, immaterial, and incompetent.)

A. Mining, chloriding, working, and prospecting.
Q. Have you lived there most of the time and continuously for the last eight years?

A. Yes, sir.
Q. Has Mr. Silva resided there most of the time during the last 8 years?
A. He has been there a good deal of the time.
Q. I mean in Darwin and the neighborhood.
A. Yes, sir.
Q. Do you know the Stirling mine which has been spoken of in this case?
A. Yes, sir.
Q. How far is it from Darwin?
A. About 12 miles.
Q. Have you ever visited that mine?
A. Yes, sir.
900 Q. When?
A. About a week ago, the last time.
Q. When did you visit it before?
A. I do not recollect what time it was before.
Q. Cannot you remember the year?
A. In 1885; the time before the last, I think.
Q. The last what?
A. The last time I visited the mine.
Q. How many times have you visited that mine altogether?
A. I have been there two or three different times.
Q. I mean to go in and examine it?
A. I have been there twice.
Q. When was the first time?
A. I do not recollect what time it was.
Q. What year was it in?
A. 1885.
Q. Was it not before the criminal trial of Frank Silva?
A. Yes, sir.
Q. Was that last year?
A. Before the criminal trial.
Q. Was not that in the fall of 1884; two years ago this fall?

(Objected to by complainant as leading.)

A. I was thinking it was last year. I might be mistaken about that. I was there at two different times.
Q. You visited it immediately preceding the criminal trial of Frank Silva?
A. Yes, sir.
Q. Was not that the time that Mr. Alexander went out and made the survey?

(Objected to as leading, immaterial, and irrelevant.)

901 A. Yes, sir.
Q. Now, was not that in the year 1884?

(Objected to by complainant as leading.)

A. I think it was.
Q. Look at that map (pointing to "Exhibit F"). Read this down

here at the bottom. Does that in any way assist you to describe this mine or the working of it?

A. Yes, sir.

Mr. REDDY: We object to the witness' statements on the map being presented to the witness, because the map describes the condition of things in the mine, if the statements there written be true, and it is as much as to ask a witness to read what has been written by others, and to verify the fact.

Mr. MINER: I am not asking the witness to look at anything that is written on the map, only the workings.

Mr. REDDY: He cannot do the one without the other, because it is written at each point.

Mr. MINER:

Q. When you first visited the mine did you examine it for the purpose of seeing whether there was any ore in it?

(Objected to by complainant on the ground that it is immaterial and irrelevant; that it is not shown that the witness has any knowledge concerning minerals or would know them from other rock in the vicinity.)

A. Yes, sir.

Q. How long have you lived in mining countries?

(Objected to by counsel for complainant as immaterial and irrelevant, for the reason that living in a mining country would not educate a person in the character of mines and ores; for instance,
902 as in this case, a person living there for the purpose of carrying on the business of merchandizing.)

A. I should judge about 12 or 14 years.

Q. Have you had any experience with ores?

A. Yes, sir.

Q. What experience?

A. I have milled and worked in a furnace some.

Q. Did you ever buy or sell ore?

A. Yes, sir.

(Objected to by complainant as irrelevant, incompetent, and immaterial, and moves to strike it out on the ground that the character of ores he has been dealing with are not disclosed and whether they are of the character of the mine in question.)

Q. Do you know anything about lead ores, carbonate ores, and galena ores?

A. Yes, sir.

Q. How much experience have you had with those kind of ores?

A. I have never had any experience; I have been amongst them where they have handled them a great deal.

Q. Did you ever handle them and deal in them?

A. Yes, sir.

Q. Did you work in a furnace that was smelting lead ores?

A. Yes, sir.

Q. How long?
A. I could not say; several months.
Q. You know lead ore when you see it?
A. I think I do.
Q. Do not you know whether you do or not?

(Objected to by complainant as leading.)

A. Yes.
903 Q. Do you know a piece of wood when you see it?
A. I should say I did.
Q. Do you know a piece of chalk when you see it?

(Objected to by complainant as immaterial and irrelevant.)

A. Yes, sir.
Q. Do you know snow when you see it?

(Objected to by complainant as irrelevant and immaterial.)

A. Yes, sir.
Q. Do you know ice when you see it?

(Objected to by complainant as offensive in manner and style.)

A. Yes, sir.
Q. Did you ever have chalk or ice or snow analyzed, so that you could determine the component parts of either of them?
A. No, sir.
Q. Then you know ores pretty much in the same way that you know snow, ice, chalk, and cheese and bread?

(Objected to by complainant as immaterial, irrelevant, incompetent, and leading.)

A. Certainly.
Q. Do you remember the first time that you ever saw a piece of lead ore?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. No, sir; I never did.
Q. Was it a long time ago?
A. Some time ago; yes.
904 Q. Have you seen much of it since?
A. Yes; considerable.
Q. Have you seen much of it around Darwin and in that neighborhood during the time you have lived there?

(Objected to by complainant as leading.)

A. Yes, sir.
Q. Did you ever have any lead ore analyzed or an assay made of it?

(Objected to by complainant on the ground that it is not shown that the witness is an assayer, and what other people have done for him is irrelevant and immaterial, as he would know no more after than before; also on the ground that it is hearsay.)

A. I have.

Q. Have you ever had any assays enough so that you could judge when you saw some of the kind of ore like that which you had assayed that you would then be able to judge of the kind, quality, and value of it?

(Objected to by counsel for complainant as immaterial, irrelevant, and incompetent, and calls for hearsay.)

A. I could tell whether it was waste or dirt.

Q. You are positive you can tell waste, country rock from ore?

A. Yes; I think I can.

Q. When I say ore I do not mean ore of any particular value. When I speak of ore I mean rock containing mineral substance of rich or poor, high grade or low grade—it is all ore. When I speak of ore in this examination I do not pretend to ask you about
905 any valuable ore or low-grade ore; I simply mean ore which bears mineral. Did you find any ore in the Stirling mine during your first visit, being the mine represented on this map?

(Objected to by complainant on the ground that the question is incompetent and irrelevant, that it is leading, and that the witness is furnished with an erroneous definition of the word ore.)

A. Yes, sir.

Q. I will direct your attention to this model marked "Respondent's Exhibit F," and ask you if that substantially represents some of the workings in the Stirling mine?

(Objected to by complainant as immaterial and irrelevant, and does not refer to any point in the mine put in issue by the pleadings.)

A. Yes, sir.

Q. Now describe what you saw in the mine at your first visit in the way of ore, and what place you saw it.

(Objected to by complainant on the ground that it is not shown that the witness understands or knows what it is in its true sense and meaning; that it is incompetent, immaterial, and irrelevant, for the reason that it does not call for any information at the points in the mine where it is alleged any false representations were made concerning its condition.)

A. I do not know that I can go on and explain the whole thing where I saw ore in every place.

Q. Explain where you did see it.

A. The last time I was in there.

906 Q. Commence with your first visit.

Mr. REDDY: I object to counsel instructing the witness.

Mr. MINER: Take the stick and point out where you went. Tell it in your own way.

A. I went into the north drift in the first place.

Q. The west drift in the main tunnel?

A. Yes, sir.

Q. You went into the northwest drift from the main tunnel?
A. Yes, sir.
Q. Did you see any ore in that?
A. I saw some into a raise, on the left-hand raise, on the south side.
Q. I will ask you if you went into the point marked "No. 7" on the model, being an upraise from the southeast drift?

(Objected to by complainant as leading, and that the witness should be permitted to state where he went and at what points he found ore.)

A. Yes, sir.
Q. Did you see any ore in there?

(Objected to by complainant as leading.)

Q. Describe the size of the ore body in it.

(Objected to by complainant on the ground that it assumes the existence of an ore body which has not been described to the witness.)

Q. Describe the size of the ore which you saw there on the inclined tunnel.

(Objected to by complainant on the ground that it assumes the existence of ore and that the witness saw ore.)

907 A. On the incline there was a six-inch ledge.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to any question put; that a six-inch ledge does not necessarily mean ore, and that the inquiry is concerning ore.)

Q. Does that incline tunnel connect with the southeast cross-drift from the main tunnel in the mine?

(Objected to by complainant as leading.)

A. Yes, sir.
Q. At what point does it connect?
A. I disrecollect now where it does connect.
Q. Do you know where winze No. 1 is?
A. Yes, sir.
Q. Does it connect anywhere near that winze?

(Objected to by complainant as leading.)

A. It connects at No. 1.
Q. What No. 1?
A. No. 1 shaft.
Q. No. 1 winze, is it not?
A. Yes, sir.
Q. Did you go up in that upraise near that No. 1 in this place marked No. 7, and examine the upraise during your first visit?
A. Yes, sir.
Q. Did you find any ore there?

(Objected to by complainant as leading.)

A. I found some ore.

Q. About what was the extent of the ore in that upraise?

A. It is scattered through the ledge so that I could not tell.

Q. Did you examine the portion of the mine known as the ore chamber on the 55-foot level?

A. Yes, sir.

908 Q. During your first visit?

A. Yes, sir.

Q. Does that model represent that in any place on it?

A. Yes, sir.

Q. What place on that model would represent substantially that ore chamber?

A. It is in here.

Q. What is that marked?

A. No. 8.

Q. Did you find any ore in there on your first visit?

A. Yes, sir.

Q. Now, what part of that ore chamber did you find ore in?

A. I think it was in here.

Q. The southeast corner?

A. Yes; the southeast corner.

Q. Was the ore on any side of the chamber outside of the southeast corner?

A. Yes, sir.

Q. Which side?

A. There was some on this side.

Q. Please name it by the compass. Which side?

A. I should judge on the southwest side.

Q. Any other place?

A. Yes; it was on the northeast.

Q. I ask you if there was any connection between that ore chamber and the 39-foot level at the time of your visit?

A. Yes, sir.

Q. Did you examine the 39-foot level?

A. Yes, sir.

Q. What did you find up there, if anything?

A. I found some ore.

Q. Was that a continuous body of ore from the chamber up to the 39-foot level or not?

(Objected to by complainant as leading.)

A. Yes, sir.

Q. I asked you if it was continuous or not?

909 A. It was continuous right up.

Q. Was anybody in that mine with you at the time you first visited the ore chamber?

A. Yes, sir.

Q. Who?

A. Mr. Silva and Mr. Alexander.

Q. Who else?

A. Do you have reference to the last time?

Q. I have not said a word about the last time. I am talking about your first visit.

A. Mr. Silva, Mr. Alexander, and myself. I do not recollect the other man now. I think there was another one.

Q. Was any sample of ore removed from that ore chamber by either of these parties in your presence at that visit?

A. Yes, sir.

Q. I ask you to look at Exhibit G and state whether that is the sample that was removed at that time or not.

A. That has been badly handled, I think, since I saw it last. There are the same looking marks on it as there were on the piece I saw before.

Q. Is that the character of ore and the kind of sample that was removed on your first visit to the mine?

A. Yes, sir.

Q. From where was that sample taken which was actually removed at that time, if this was it? Point to the model and designate the place.

A. In the southeast corner.

Q. The southeast corner of the chamber?

Q. Yes, sir.

910 Q. What does this little hole represent in this chamber on the model?

A. That is a winze which runs to the other level.

Q. Was there an excavation in the chamber at that time like this?

A. Yes, sir.

Q. How deep was it—the little shaft itself, outside of the excavation?

A. About three feet, I think.

Q. Was this sample of ore removed from the vicinity of that little shaft?

A. Yes, sir.

Q. From what part of it?

A. Right on the edge of it.

Q. On which edge of the little shaft?

A. On the southeast.

Q. I will ask you if this sample, Exhibit G, is a fair sample of the ore which was in that ore chamber at the time of your first visit?

(Objected to by complainant on the ground that the sample is not shown to be ore and the witness has not stated it to be ore of his own knowledge.)

A. Yes, sir.

Q. Is this the material that you call ore, that you designate ore in that mine?

A. Yes, sir.

Q. Is this the stuff?

(Objected to by complainant as leading.)

A. Yes, sir.

Q. Does this Exhibit G represent and is it like the material in the Stirling mine, which you have designated as ore?

(Objected to by complainant as leading; the witness has
911 not yet shown that he was capable of distinguishing between ore and other rock.)

A. Yes, sir.

Q. Whether this is ore or not, that is a sample of the material which you saw in that mine?

A. Yes, sir.

Q. At the point you have designated?

(Objected to by complainant as leading.)

A. Yes, sir.

Q. Now, I will ask you what, in your opinion, is this Exhibit G—ore or not ore?

(Objected to by complainant on the ground that the witness has not been shown to be capable of forming an opinion on the question.)

A. I would consider it ore.

Q. What kind of ore?

A. Carbonate lead.

Q. When did you visit the mine at the last time?

A. On the 7th of this month.

Q. Was any one with you on that visit?

A. Yes, sir.

Q. Name them.

A. Alexander, Silva, myself, Eddy, and Fitzgerald.

Q. Did you examine the ore chamber on this last visit, on the 7th of June?

A. I did.

Q. Was there any difference in the looks and appearance and size of the ore chamber and its appearance and size during the visit you have testified to?

A. No, sir; I did not see much difference.

Q. Did you see any difference in the looks of the ore?

A. Not any.

Q. Was there any ore in the chamber on your last visit?

912 (Objected to by complainant on the ground that the witness has not shown himself to be a judge of ore.)

A. Yes, sir.

Q. Did you take out any of this material which you have termed ore?

A. I did.

Q. Have you it with you?

A. Yes, sir.

Q. Produce it.

A. There it is.

Q. Did you take that out yourself?

A. Yes, sir.

(Respondent offers in evidence a specimen, being a sample taken by him from the Stirling mine on his last visit of June 7, 1886. The specimen is marked "Respondent's Exhibit M.")

Q. From what part of the chamber did you take this sample marked "M?"

A. About the same place that I took Exhibit G, if that is the piece.

Q. Is that a fair sample of the material in that ore chamber, which was there on the 7th of June, which you call ore?

A. I should judge it was.

Q. What was the size of that material, the width and extent of it, in the chamber on your last visit?

A. From a foot to three feet wide.

Q. On which side of the ore chamber was it three feet wide?

A. On the northeast side.

Q. At what point was it a foot or more?

A. On the southeast corner of the chamber, right in the bottom of the chamber.

913 Q. Is this deposit of material running up to and by the little excavation in the chamber which you call the shaft three feet deep?

(Objected to by complainant as leading.)

A. It runs up to the excavation.

Q. Did you examine the 39-foot level at your last visit?

A. I did.

Q. Was there any material up there similar to this?

(Same objection by complainant.)

A. Yes, sir.

Q. In what portion of it?

A. There was more or less material of that kind all through the ledge.

Q. What was the width of the ledge in the 39-foot level?

A. About three feet.

Q. Was it a continuous ledge from the ore chamber up into the 39-foot level?

(Objected to by complainant as leading.)

A. Yes, sir.

Q. Now, facing the northeast side of the ore chamber, in what direction would the ore go from you?

(Objected to by complainant on the ground that it is leading and assumes the fact that the ore extended from the point where it was first seen.)

A. It run about north—it runs down north.

Q. Which way did it appear to pitch?

A. It appeared to pitch in a northerly direction.

Q. If this is the north and south line through the model (placing

914 a cane on the line marked "true north" on the bottom of the model), in which direction did the ledge in the ore chamber appear to pitch?

(Objected to by complainant as leading, and as assuming that the ledge had a certain pitch or that it extended far enough to constitute a pitch.)

A. It would pitch east.

Q. How did it appear to pitch in the 39-foot level?

(Objected to by complainant on the ground that it is leading and assumes that the ledge had a pitch and that it extended therefrom.)

A. It pitched in about the same direction.

Q. I will ask you if you could determine by looking at that ledge how far it extended into the ground that you could not see into, looking into the face of it?

(Objected to by complainant on the ground that the question is irrelevant and immaterial.)

A. I could not look into the ground at all.

Q. What you saw of it did extend, as I understand you, in an easterly direction?

A. Yes, sir.

Q. Assuming that the line on the model is the correct north and south line?

A. Yes, sir.

Q. Do the red sticks on the northeast side of the ore chamber substantially represent the course of that ledge in the ore chamber?

(Objected to by complainant as leading.)

A. Yes; something.

Q. Did this ledge extend up into the 39-foot level without a break?

915 (Objected to by complainant on the ground that the witness has already answered it, and also that it is leading.)

A. Yes, sir.

Q. Did you notice any excavation going down from the bottom of the 39-foot level?

A. Yes, sir.

Q. What was the excavation named, if it had any name?

A. I do not know that it had any name, particularly.

Q. What is it called?

A. Silva called it the Modoc winze.

Q. Did you go down in that at this last visit?

A. Yes, sir; I went down very near to the bottom.

Q. About how deep was it?

A. About 15 feet.

Q. Is there anything on that model which would represent that little Modoc winze coming down from the 39-foot level?

A. I think there is.

Q. What is that marked?

A. No. 9.

Q. Was there any ore in that when you examined it this last time?
A. Yes, sir.
Q. Did that appear to have a pitch or inclination?
A. It appeared to run down about the same as the balance of it.
Q. Was the ore in that Modoc winze of a similar character to this Exhibit M which we have put in evidence?
A. Something similar to it.
Q. Did you examine the point of location at the mine, marked on the map "point of location?"
A. No, sir.
Q. Did you examine it at your first visit?
A. Yes, sir; I believe I did.
916 Q. What did you find there in the way of ore and mineral-bearing rock?
A. At the kitchen or sleeping-house, I did not notice any ore there, where they did their cooking.
Q. Did you notice any in the vicinity of that place?
A. I noticed it over on the west side.
Q. How far from the kitchen or sleeping place?
A. That must be three hundred feet, I should judge.
Q. That is away off. I do not want that. Did you not examine the croppings at the point of location on your first visit?
A. We did.
Q. What were those croppings composed of?
A. It looked as if there might be mineral there, although there was not much of a showing that I saw there.
Q. What kind of ore?

(Objected to by complainant on the ground that counsel is assuming that there was ore when the witness merely says that it looked as though there might be mineral in it, but did not say that there was any ore.)

Q. What kind of mineral-bearing rock?
A. There was some little lead and carbonate.
Q. You are a merchant in Darwin, are you not?
A. Yes, sir.
Q. Do you deal in ores down there, buying and selling ores? Have you done that to any extent during the last eight years?
A. Occasionally.
917 Q. What kind of ores have you bought and sold there?
A. Most all kinds of silver ores and silver lead.
Q. Have you bought and sold ores of the character of these Exhibits G and M?
A. Something of the character.

(Objected to by counsel for complainant as immaterial, irrelevant, and incompetent, and counsel moves to strike out the answer as not responsive to the question.)

Q. Have you bought and sold ores of the same class as the samples Exhibits G and M?

(Objected to by complainant on the ground that it is immaterial and irrelevant.)

A. I could not swear that I have, of the same class of ore.
Q. I mean ores of the same nature or character.

(Objected to by complainant on the ground that it is immaterial and irrelevant.)

Q. Have you bought gold ore there?

(Objected to by complainant on the ground that it is immaterial and irrelevant.)

A. Yes, sir.
Q. In Darwin?
A. Yes, sir.
Q. Have you bought silver ore there?
A. Yes, sir.
Q. Have you bought lead ore there?

(Same objections by complainant.)

A. Yes, sir.

918 Q. What kind is this? Is this lead ore, silver ore, or gold ore?

A. It is lead ore—carbonate ore, they call it.

Cross-examination:

Mr. REDDY:

Q. When did you first come to the town of Darwin?
A. I think it was in 1875.
Q. Did you remain there from that time on to the present?
A. No, sir.
Q. How long did you remain in Darwin on that occasion?
A. I was only there at different times—off and on.
Q. How long were you there when you first went there?
A. About two days.
Q. And how long were you then absent from Darwin when you went away that time?
A. Probably a month.
Q. Where did you go to?
A. Panamint.
Q. You had business at Panamint at that time?
A. Yes, sir.
Q. When did you return to Darwin the next time?
A. I came there off and on.
Q. I want to know when you came the next time—what year.
A. The same year.
Q. How long did you remain then?
A. A day or two.
Q. Where did you go to then?
A. Back to Panamint.
Q. You were residing in Panamint then, were you?

A. Yes, sir.
Q. What year did you quit your residence in Panamint?
A. I think in the fall of 1876.
Q. Then where did you go to—Modoc?
919 A. Yes; and back to Darwin.
Q. Never mind about Darwin. What place did you next take up your residence in?
A. I had no particular residence. I was working at Lookout.
Q. How long did you live there at Modoc after leaving Panamint?
A. Several months.
Q. How many months?
A. I could not say.
Q. Two months would be several months. Can you tell when you left there and took up your residence at some other point?
A. No, sir.
Q. Can you tell what year it was in?
A. I think it was in 1877.
Q. What time in 1877?
A. Some time in the fall.
Q. What were you doing in Modoc or Lookout?
A. Working in the mine.
Q. What were you doing in the mine?
A. Mining.
Q. What part of the mining did you do?
A. A little of everything.
Q. Tell us everything you did. Were you not driving a mule a greater portion of the time?
A. Yes; and worked in the mine.
Q. Did you not drive a mule, work a windlass, or a tip-cart?
A. Yes, sir.
Q. You say you were mining while you were driving a tip-cart?
A. Working in the mine, and I was driving a pack train.
Q. Were you mining while you were driving the pack train?
920 A. No, sir.
Q. Were you mining while you were driving the tip-cart?
A. No, sir.
Q. Were you mining while you were driving a mule?
A. No, sir.
Q. How much of the time did you spend in driving a mule and tip-cart and attending to the pack train?
A. That I could not say.
Q. What proportion of the time?
A. It might have been two-thirds of the time.
Q. With the mule?
A. Yes, sir.
Q. What did you do in the mine?
A. I was working in the mine.
Q. What part of the mine did you work—in running a tunnel?
A. Yes, sir.
Q. That was in hard rock, was it not?

A. Yes, sir.
Q. What were you doing—attending to a drilling machine?
A. No, sir.
Q. Shoveling?
A. Yes; part of the time.
Q. What did you do the balance of the time?
A. Drilling.
Q. By hand?
A. Yes, sir.
Q. In hard rock?
A. Yes, sir.
Q. What kind of rock was it?
A. Supposed to be lime.
Q. You did not learn anything about carbonate or galena ore while driving in that lime rock?
A. I worked in three or four places.
921 Q. I am asking about while you were working in the lime rock. Did you learn anything about ores then?
A. No; I do not think I did.
Q. You worked in the tunnel and hard country rock all the time you were in Modoc while you were mining?
A. No, sir.
Q. What portion of the time that you were mining did you spend in he tunnel and working in the lime rock?
A. We were working at different places.
Q. I ask you how long you were working in the tunnel?
A. I could not say.
Q. How many months were you at Lookout altogether?
A. I could not tell you.
Q. Do you know whether it was one month or two?
A. Yes; I know that.
Q. How many was it?
A. Four or five, or probably six.
Q. Two-thirds of the time that you were mining did you work in the main tunnel in the lime rock?
A. I worked at different places.
Q. Did you not spend two-thirds of the time you were mining in shoveling and drilling in the lime-rock tunnel?
A. I do not know but what I did.
Q. A little more?
A. I cannot say.
Q. You say two-thirds of the six months that you were there you were chasing mules, driving a tip-cart, and doing that sort of mining?
A. Yes, sir.
922 Q. That would leave you two months for mining, and you say two-thirds of that time you were in the lime-rock tunnel; that would leave you twenty days' experience at other work. What other work did you do in the mine in that twenty days?
A. I could not tell exactly what I was doing.
Q. Packing tools?

A. No, sir.
Q. Packing powder?
A. I do not know that I was. I have packed powder.
Q. Do you not know that you were generally what is called on a man-of-war and in mines a "powder monkey?"
A. Yes, sir; you can call it anything you are a mind to.
Q. That is what you were doing in the twenty days?
A. Anything I could get to do; I was glad to get anything to do.
Q. I am not reflecting on the kind of work you were doing; I am simply asking as to your experience. What were you doing in Panamint?
A. At what time?
Q. During your residence there.
A. I was there at different times.
Q. All the time you were there.
A. Keeping saloon when I was first there; afterwards I was running the mill.
Q. What kind of ores are there in Panamint?
A. Silver ores.
Q. Rich silver ores?
A. Very good ores, some of them.
Q. Did you have any control or say over the ores; have
923 you handled them except working by the day in the mill?
A. Yes, sir.
Q. Just a common hand in the mill. You were not an amalgamator?
A. Yes, sir.
Q. That is what you were?
A. I was amalgamating at times.
Q. All you had to do with the ores after they were crushed and put in the pan was to see that the pan kept rolling and to put in the necessary quantity of quicksilver; you saw it in pulp. Your business did not require you to examine ores or do anything with them until they were pulverized and put into the pan, and then you kept the pan rolling around?
A. I have done all kinds of work.
Q. That is all the experience you had with ores in Panamint; is not that so?
A. I worked round the mill.
Q. Did you do anything more with ores except to work them in the pans?
A. Yes, sir.
Q. What else?
A. I have assayed some of the ores.
Q. Are you an assayer?
A. Not a perfect one; I have done assaying for myself.
Q. Did you assay any for that mill?
A. Yes, sir.
Q. The company went broke?
A. The company that I worked for was my own company.
Q. It became insolvent?

A. Not when I was there.
Q. Soon after you left it went to pieces, financially speaking?
A. No, sir.
924 Q. Did it not become insolvent and refuse to pay its debts?
A. I believe it did a year after that.
Q. About a year after you left?
A. Yes, sir.
Q. Did they have the same kind of an assayer as you were after you left?
A. I do not know.
Q. The reason why they became insolvent was because they took in all kinds of ore without reference to its value?
A. That I could not say.
Q. If the ore had been rich enough to work the company would have made money, would it not?
A. I suppose it would.
Q. The trouble was you took in ores that were of no money or sufficient value and it went to pieces?
A. I never took any ores that did not pay. I do not know what the company did afterwards.
Q. That is about the extent of your experience in Panamint?
A. Yes, sir.
Q. You assayed some rock and stirred it up in the pan, amalgamator?
A. It is not a great deal that I have done; of course not.
Q. When you left Modoc, after twenty days' experience as a powder money and forty days' in a hard-rock tunnel and four months' driving a tip-cart, mule, and pack train, you came to Darwin?
A. I believe I did at that time. I would not be certain.
Q. What did you commence doing in Darwin; what business did you go about in Darwin?
925 (Counsel for respondent objects to all questions regarding business outside of the witness' experience in mines.)
A. I chlorided some before I came to Darwin.
Q. What do you call chloriding?
A. Getting out ore.
Q. Getting out ore out of your mine or out of some one else's?
A. Out of my own.
Q. Did you work only in your own mines chloriding?
A. Yes, sir.
Q. How many mines did you work in?
A. Only one.
Q. What mine was that?
A. A mine over on the other side of Darwin marsh.
Q. A silver mine?
A. Yes, sir.
Q. What was the name of it?
A. The Hindoo.
Q. How did you come by that mine; did you jump it?

A. No, sir.
Q. Did you relocate it?
A. My partner found it.
Q. You were the first locator of it?
A. My partner was.
Q. The ores from that mine are wholly distinct from the ores that are here as samples, if the samples are ore?
A. Yes; they are different from this ore.
Q. What was your next experience—how long did you work in that Hindoo mine?
A. I do not know exactly.
Q. How many tons of ore did you take out?
A. I could not tell you that.
Q. Did you take out two tons?
926 A. I think I did.
Q. Three?
A. Yes; I could not say how much.
Q. Did you take out five tons, all told?
A. I expect I did.
Q. Did you take out and remove from the mine five tons of ore while you were there—I mean with your own hands?
A. I could not say what amount there was.
Q. Are you ready to swear that you took as much as five tons of ore out of that mine?
A. No; because I could not tell you what amount I did take out.
Q. Your impression is that you did not take out three tons?
A. I do not recollect.
Q. That is the limit of your experience up to this time. Tell us what next you did in the way of business.
A. I came up to Darwin.
Q. And you have been merchandising ever since?
A. Yes, sir.
Q. You have stated now the limits of your mining experience in that region of country?
A. Yes, sir.
Q. And stated the full extent of your acquaintance with lead ores, have you not?
A. I have been amongst lead ores a good deal.
Q. Have you stated now all your experience?
A. I have not had a great deal of experience in lead ores.
Q. Have you had any experience in lead ores except what
927 you had in the Stirling mine—I mean by entering mines and taking out ores?
A. I have been in mines.
Q. I know you have. I ask you if you have worked in any lead mines?
A. Not to amount to anything.
Q. I ask you what other, if any, lead mine you ever worked in than in the Stirling?
A. I do not know that I ever worked in the Stirling.

Q. Yeu went there and took out some of these samples. Beyond the taking out of these samples in the Stirling mine, name where and when you worked in a lead mine.
A. I have not worked in a lead mine in this county.
Q. Where did you ever work in a lead mine?
A. I worked a little in Eureka.
Q. What mine in Eureka?
A. At the Richmond.
Q. What year?
A. 1872 and 1873.
Q. What did you do in the Richmond mine?
A. I worked there a few days.
Q. I am not asking you about the time, but what you did.
A. Took out some ore.
Q. Where?
A. Out of the Richmond.
Q. What level?
A. I do not recollect what level.
Q. How deep down?
A. Down to the 30-foot level or 40-foot level; I forget which.
Q. How many days did you work there?
A. Three or four days.
Q. Did you do any drilling or shoveling out the waste?
A. Getting out some ore?
928 Q. Wheeling out ore?
A. Yes, sir.
Q. Who worked with you?
A. I cannot recollect his name.
Q. Who employed you?
A. I forget the man's name.
Q. Who was the superintendent at that time?
A. I do not know I can tell you that.
Q. What year was it in?
A. I believe Tom Marks was there at that time.
Q. What year was it in?
A. 1873.
Q. How many days did you work?
A. Probably two or three days; that is all; I just went in there to help them.
Q. And you worked three?
A. Two or three; I could not say exactly.
Q. Were you discharged, or did you quit of your own accord?
A. I was not discharged.
Q. Why did you quit—because you did not know how to do the work?
A. I had other work to do; I went in there to help them get out that little lot of ore.
Q. You did the wheeling and shoveling?
A. Yes, sir.
Q. It was already broke when you got in there?
A. Yes, sir.

Q. You did some shoveling and wheeling for two or three days in the Richmond mine?

A. Yes, sir.

Q. Is that the extent of yonr mining experience in lead mines?

A. Yes; about.

Q. You say you have been engaged in buying and selling
929 ores in Darwin?

A. No; I have taken ores and shipped them and had assays made of them.

Q. You said you had been dealing, buying and selling ores; we will see about it. Name the person from whom you ever bought a pound of lead ore in Darwin or any other weight.

A. I cannot say I ever bought any; I had ores that I shipped below; I handled them and had them assayed.

Q. Name the person from whom you ever bought a pound of lead ore or any other weight in Darwin.

A. Not direct in Darwin; I cannot.

Q. Anywhere in that section of the country.

A. No, sir; I do not know as I can.

Q. Did you ever buy a pound of lead ore in Inyo county? If so, name the person from whom you bought it and when you bought it.

A. I do not know that I have directly bought any ore.

Q. I do not care how you bought it; if you bought it name the person.

A. I say I did not.

Q. Did you ever buy a pound of carbonate of lead ore from any person in the county of Inyo?

A. I do not recollect that I ever did.

Q. If you had you would recollect it?

A. I think I might; I do not know; we are always changing around, and they turn the ore over to me and have samples made; I do not know I ever did buy any.

930 Q. It is not true that you have been dealing in—buying and selling—ores—lead ores—in Darwin or in Inyo county?

A. No; I have not been buying.

Q. It is not the fact?

A. I have not bought any ores; what I meant was I shipped ores.

Q. You said you were buying and selling and dealing in ores. That is not true?

A. I have not bought any ores right out and out; what I meant was that I had handled ores and dealt in ores—shipped them and had assays made.

Q. I am speaking of lead and carbonate ores.

A. That is what I mean.

Q. Have you ever bought, sold, or dealt in carbonate or lead ores?

A. I have never bought any.

Q. Have you dealt in them?

A. I have handled them.

Q. What do you mean by handling them?

A. Shipping them for other parties.

Q. You are simply a forwarding merchant, then?

A. I shipped some ores and had assays made of different kinds.
Q. Where did you have the assays made?
A. Some assays by McKenzie and Gorman and Fitzgerald.
Q. Is it not the fact that all the dealings you have had with ores in Darwin were simply to send samples to the assayer and
931 find out the value of the ore you were going to ship, pay no further attention to it, and ship it to San Francisco for sale?
A. Certainly.
Q. You would not know anything of your own knowledge about those ores except what the assayer would tell you?
A. I could not tell you what amount of mineral was in it.
Q. You would not know anything about ores if you had not bought them at all, except from the return of the assayer?
A. Certainly not.
Q. You have stated fully and fairly all your experience as a miner and all your experience with lead ores, either hard or soft, carbonate or galena?
A. I do not know that I have the whole.
Q. Practically, substantially, all of your experience?
A. Yes, sir.
Q. When did you first become acquainted with Frank Silva; after you came to live at Darwin or before?
A. It was before I came to live at Darwin.
Q. Where did you first meet him?
A. I met him in Darwin.
Q. Where and when; where in Darwin and when?
A. I could not tell exactly what time.
Q. Were you introduced to him by any one?
A. I do not recollect whether I was or not.
Q. You do not recollect when you first met him, how, or under what circumstances?
A. Not the time.
Q. When did you first become formally acquainted with him?
932 A. About seven years ago, I should judge; I wanted to get a jack from him at one time, went over to the mine, and stayed there with him.
Q. Prior to the 15th of February, 1884, had you ever heard any one talk about Frank Silva one way or the other as to his honesty or integrity?
A. I do not know that I had.
Q. Mr. Silva was one of many miners working in the district, was he not?
A. Yes, sir.
Q. Where there was no occasion to inquire about their honesty or integrity, one way or the other, except the merchant who might want to trade with him?
A. No, sir.
Q. Then he was not a man whose fame had spread all round the country as being an honest man and a man of great integrity. That is not what you wish to be understood, is it?

A. I do not know anything about that.

Q. You did not know him as a man whose great integrity had made him famous? Is that what you would have us understand, or is it the fact that you simply never heard of his honesty or integrity talked about at all up to that time?

A. I never heard anything particular.

Q. You never heard the question mooted one way or the other?

A. Not to my recollection.

Q. You had no reason for noticing Frank Silva any more than any other miner in that district in that respect?

A. What I knew about Frank was from his dealings with me.

933 Q. That is all you know about him?

A. Yes; I never heard anything *pro* or *con* about him.

Q. You do not know anything about his reputation except what impressions were made upon you by his dealings with you?

A. His reputation is supposed to be good.

Q. I am not talking about that. I ask you if what you have said here concerning his reputation was not created by your dealings with him?

A. Yes, sir.

Q. That is all you know about it—simply your own impressions?

A. I say yes. I have never heard any one say anything wrong about the man. His reputation is supposed to be good.

Q. Please leave that out. I am not asking about what is supposed to be. Every man is supposed to be honest until the contrary is proved. You say that much of what you have said about his reputation has been from your impressions created by your dealings with him. I will ask you if your dealings with him warrant you in saying that he is honest and all that sort of thing. Has he paid you all that he owed you?

A. No, sir.

Q. Have you not been complaining of Frank Silva because he would not pay you what he owed you?

A. I complained; yes; but the probability is he was not able to pay me.

Q. Do you not know that he had twenty-five hundred dollars which he sent to Portugal, and did you not accuse him of taking
934 that and sending it out of the country and not paying his creditors?

A. He only paid a portion of them.

Q. Do not you know he had more money left and sent it out of the country?

A. I do not know whether he sent it out of the country.

Q. Did you not complain of him for not having paid you, and have you not complained ever since that time?

A. Not that I know of.

Q. Did you not tell me that your opinion had changed about Silva for the reason that he did not act honest and square with you, and you were sorry you ever testified in the case at all on account of the way he had treated you?

A. Not to my recollection.

Q. Did you not tell me, in going in your wagon from the town of Darwin up to the Defiance mine, that you had changed your mind about Frank Silva for the reason that when he got his money he did not pay his creditors in Darwin and did not square with you?

(Objected to by respondent on the ground that the time or place is not mentioned when this conversation took place and it is immaterial, irrelevant, and incompetent.)

A. I do not recollect anything of the kind.

Q. Did you not tell me, on the way from the town of Darwin to the Defiance mine, that Frank Silva had not paid you your money as he ought to do?

(Same objections by respondent.)

935 A. I do not recollect it.

Q. Do not you know now that you told me, in riding in your wagon going from the town of Darwin up to the Defiance mine, that Frank Silva had not paid you?

(Objected to by respondent as a repetition. The witness has answered the question. The time is not mentioned when the alleged conversation took place.)

A. I no not recollect. I was trying to think whether I said anything about it. I might have said he had not paid me yet.

Q. Did you not say that he had not acted square with you and that he ought to have paid you when he sold the mine?

A. I do not know. I did not say that, as I recollect.

Q. Did you not say something in substance the same?

(Objected to by respondent on the ground that the time is not given when the alleged conversation took place and it is immaterial and incompetent.)

A. I do not recollect such a conversation.

Q. Do not you recollect any conversation with me concerning Frank Silva and your relations with this case going from the town of Darwin up to the Defiance mine on your buckboard?

(Objected to on the ground that it is not stated at what time the conversation took place.)

A. There was something or other said about his paying at the time.

936 Q. Did you not complain of his action in not paying?

A. He paid a portion. I do not know whether he had paid me any then. There might have been a conversation of that kind. I do not think I ever said he had acted dishonestly to me.

Q. Did you not complain about his action in not having paid you at that time?

(Same objection by respondent.)

A. I might have said something to that effect.

Q. Do not you know that he owed several people in Darwin and failed to pay them out of that money, and his action was generally complained of by the business men of Darwin with whom he had dealings for not paying them out of the purchase price which he received from that mine?

(Objected to by the respondent on the ground that the question is immaterial, irrelevant, and incompetent; that the persons complained of have not been mentioned, nor the time when they complained, nor the circumstances under which they complained, nor has the conversation been stated to the witness, together with the times, the parties present, and the circumstances under which it was had, and on the further ground that it appears from the evidence in this case that seventy-five hundred dollars of the ten thousand dollars was, by the act of the complainant in this case, tied up
937 and put beyond the control of the respondent in this action, and he was thereby rendered unable to pay his debts out of the seventy-five hundred dollars which was so tied up.)

(Counsel for complainant excepts to the statement of counsel for respondent, made in the presence of the witness.)

A. Certainly they found fault about not getting their money.

Q. Was he not complained of as not having acted honestly and squarely as a business man in that respect?

A. He told me——

Q. I am asking you now what the people say, and if you have not heard his action complained of in not paying his creditors in Darwin after he received a portion of the purchase-money?

(Objected to by respondent as immaterial, irrelevant, and incompetent, the time, circumstances, and parties present when any conversation of the kind sought to be elicited by the question took place not being stated to the witness. Further, it does not appear that the said complaint and charge of dishonesty against the respondent was made prior to the commencement of this action and prior to the 7th day of May, 1884, when the defendant was charged with obtaining money under false pretenses in the criminal
938 action. Further, it is not in cross-examination, because the direct examination only extended to the 7th day of May, 1884, and it does not appear that these statements were made, if ever made, prior to that date.

A. Yes, sir.

Q. Do you know Mr. J. E. Eddy, of Darwin?

A. Yes, sir.

Q. Have you ever heard him speak of Mr. Silva and complain of his action in not paying his debts when he received money with which to pay it?

(Objected to by respondent on the same grounds.)

A. I believe I have.

Q. State whether Mr. Eddy complained of his acting dishonestly and unfairly in not paying him.

A. Mr. Eddy never had much conversation with me.

Q. Did he not state that Silva had acted unfairly and dishonestly with him in not paying him?

(Same objections by respondent.)

A. I believe he did.

Q. That was soon after the sale of the mine, after Mr. Silva had come back, and after he had received the money at Carson?

(Same objections by respondent.)

A. I think the first I heard Eddy say anything about it was about the time of the first portion of the suit; I think so.

(Counsel for respondent moves to strike out the last answer
939 on the ground that it appears to have been after the 7th day of May, 1884, and is not in cross-examination and is irrelevant, immaterial, and incompetent.)

Q. Did you not tell Mr Eddy the fact that you had not been paid by Silva after Eddy told you Silva had failed to pay him?

A. I told him I had not had all my money.

Q. You agreed with Mr. Eddy, when you came to compare notes and to see how Silva had acted with the money, that Silva had not acted right?

(Same objections by respondent.)

A. We thought he had not acted exactly right in not drawing money enough to pay his creditors.

Q. Yourself and Eddy came to the same conclusion and used the same expressions regarding him, substantially the same?

(Same objections by respondent.)

A. I do not know that we did exactly.

Q. Substantially the same conclusion was reached by both of you?

A. Yes, sir.

Q. And you say that Mr. Eddy reached the conclusion that he had not acted honestly and fairly in not paying his debts; so you both substantially came to the same conclusion? Did you hear any other person at Darwin give his opinion as to his honesty and fairness in the way he had treated yourself and Mr. Eddy?

940 (Objected to by respondent on the ground that it extends to a period of time subsequent to the 7th of May, 1884, and is immaterial, irrelevant, and incompetent, and not in cross-examination.)

A. Not that I know of.

Q. You do not recollect any now. It may have been you heard others?

A. I do not know.

Q. You talked to several persons about it, besides Mr. Eddy?

A. I do not know that I did.

Q. You have an indistinct recollection of having some conversation with me?

A. There was some, but I do not recollect what it was. I thought I ought to have my money.

Q. You remember that the sale was effected about the 15th of February, 1884, do you not—at least, in the month of February?

A. I think it might have been at that time.

Q. Do you know that Mr. Silva went to Carson, completed the trade, and came back there after the sale was made?

A. Yes, sir.

Q. He got back there before the end of February, did he not?

(Objected to by respondent as not being in cross-examination and as immaterial and irrelevant.)

A. I could not say what time it was,

Q. He got back some time in February, did he not, or the first of March?

A. I could not say positively.

941 Q. You know he was back before Mr. Yerington came down with his men and took charge of the Stirling mine?

A. I think he was.

Q. You knew at that time he had received a portion of the money?

A. I was not certain at that time whether he had or not.

Q. You knew that he went to work at the Stirling mine?

A. Yes, sir; at that time.

Q. By the time he went to work in the Stirling mine you knew he had received the money?

A. Yes, sir.

Q. Did you not ask him for your pay?

A. I do not recollect asking him.

Q. Did you allow him to pass on from February away down until the last of April, working, and having sold the mine, and not asking for payment of your store bill?

A. My partner might have asked him. I did not. I do not know whether he did or not.

Q. He having been there from February working in the mine, and having sold the mine, did you go on until the 1st of May without having made any complaint of his action at all in not paying you?

A. I do not recollect.

Q. Do not you know that you suspected his honesty very strongly from the fact that he had not paid you during all that time, after having sold the mine?

A. I suppose his excuse for not paying was that he had not money enough there to pay up the whole amount.

942 Q. Taking the two months and a half intervening between the sale and the 1st of May and knowing he had received a portion of the purchase price of the mine and not paying you, did you not commence to suspect his honesty?

A. I did not know what to think.

Q. Did you not think he was not inclined to pay and that he was dishonest in the matter?

A. I could not say that.

Q. Did you not think so?

A. I did not know what to think.

Q. You could only reach the conclusion that he was unwilling to pay you an honest debt?

A. I thought sometimes he had not got it here and again I did not know what to think.

Q. Did you not come to the conclusion that he acted dishonestly in not paying?

A. I cannot say he acted dishonestly.

Q. Did you not consider that he acted unfairly?

A. He might not have done as he could have done by me.

Q. Did you not suspect him some time during those two months and a half of being dishonest?

A. I did not suspect but what he would pay some day or other.

Q. Did you suspect that he might postpone it so as to make you very weary in thought?

A. They all do that; a good many of them.

Q. Did you not come to the conclusion that he was acting dishonestly when he had the immediate power to pay?

943 A. I did not consider he was dishonest for not paying me at that time.

Q. You afterwards complained of him as being dishonest?

A. If he went away and did not pay me, knowing he was going to leave, I should consider him dishonest.

Q. He has not paid you yet?

A. No, sir.

Q. You never expect to get your pay unless he receives the full purchase price of this mine?

A. Yes, sir.

Q. You do?

A. Yes, sir?

Q. You are relying entirely on his honesty; you have no security for it, have you?

A. Nothing any more than with lots of others; they are getting out ore there.

Q. I ask you if you have any security that he will pay you unless he recovers this sum of money that is in litigation here?

A. I do not know that I have any security. I am taking my chances with him as I am with a great many others. If he makes it, he will pay.

Q. If he should recover the money you feel perfectly satisfied he will pay you?

A. Yes, sir.

Q. Then you have an interest in recovering this money?

Mr. MINER: I object on the ground that it does not appear from the evidence——

Mr. REDDY: I object to counsel making any statement except his objection.

Mr. MINER: Judge Sawyer can rule on it. I object to it as irrel-

evant, immaterial, incompetent, not in cross-examination;
944 that it assumes a fact not in proof, to wit, that the respondent has an interest in the $7,500 certificate, and there is no evidence at all that the respondent has any interest in that or will ever get one cent out of it.

Mr. REDDY: I except to counsel making the statement which he has just made in the presence of the witness.

A. I do not take any interest in it for the money he is owing me.

Q. I ask you if you do not consider that your chances of obtaining your money on your old debt and present debt would be much improved should Silva recover the money in question or defeat this action?

(Objected to by respondent as irrelevant, immaterial, and incompetent; that it does not appear that this witness knows whether Silva will ever recover a cent of this money or whether the witness knows what this suit is about—whether it is a suit to recover that money from Silva—nor does it appear that the witness knows whether Silva has any interest in this $7,500 certificate or not.)

Mr. REDDY: I except to the statement made by counsel in the presence of the witness as tending to defeat the purposes of the cross-examination.

A. It might possibly be paid sooner, but it will be all paid anyway. I take no interest in it on account of the little money he is owing me.

Q. Do you not take a deep interest in the success of Mr. Silva in this suit?

945 A. No, I do not know that I have.

Q. Have you not from the start taken a very deep, friendly interest in Mr. Silva and his success in this litigation?

A. No, I do not know that I have.

Q. Are you friendly with Mr. Silva?

A. Yes, sir.

Q. Are you not advancing him money all the time?

A. No, sir.

Q. Do you mean to say you are not advancing him goods all the time out of your store?

A. I am to take my pay from where he is chloriding. I have not given him much—not as much as Eddy.

Q. Have you not argued in this town with a great number of persons and in Darwin that Mr. Silva was right in this matter?

A. I always thought he was right.

Q. Have you not so argued to other people?

A. I do not know but what I might have argued that.

Q. Do you not know that you have?

A. Yes, sir.

Q. To a dozen or fifty people in this county since this litigation commenced?

A. I expect I have; yes.

Q. Then why don't you answer out straight and give us the full

benefit of your knowledge? If you did not take a deep interest in the success of Silva why have you thus argued to so many people in this town and other places in the county and on so many occasions espoused his side of the case?

A. It is natural for a person to talk about it, and if he thinks
946 a man is right he naturally talks about it when he is in conversation with other parties where they talk about it.

Q. You have talked with a great number of persons?

A. I have.

Q. You always tried to persuade them to take your view of the matter?

A. I do not know that I have.

Q. What was your purpose in arguing it?

A. I do not know I have argued with any one in particular. I have told them about it.

Q. What was your purpose in making the statement to those people if it was not to persuade them to take your view of the case?

A. I do not know that I had any object in trying to make other parties do it. It was only in conversation—what I thought about it.

Q. Why did you take pains to talk with so many people if it was not for the purpose of trying to persuade them to take your view of the case?

A. I do not know that I talked to any parties unless they broached the subject to me.

Q. You were a witness on the criminal trial of the case of The People of the State of California *vs.* Frank Silva?

A. Yes, sir.

Q. Prior to that trial you had voluntarily visited the mine, and came here afterwards and testified to what you saw there?

A. Yes; I went there. I should not have gone if I had known when they came to Darwin what they wanted me to do.

947 Q. I did not ask you for your reasons. I ask you if you went.

A. Yes, sir.

Q. You came to this court and remained how long on the criminal trial?

A. 8 or 10 days.

Q. That was at your own expense?

A. Yes; I got nothing for it.

Q. You left your business in Darwin and traveled twelve miles to the mine and examined it at night, did you not?

A. No, sir; at the Stirling mine?

Q. Yes; the first time. Did you go there with Alexander?

A. Yes; we went there?

Q. What time did you get there?

A. We did do some of the work in the evening.

Q. Did you not work until 11 or 12 o'clock at night?

A. Yes; it was done in the evening, because we did not want to stay there any longer than we could help.

Q. You got through about three o'clock in the morning?

A. Yes; or earlier than that.

Q. Then you traveled from there 12 miles, back to Darwin?

A. I do not recollect now whether we traveled back that night or the next day. We wanted to get back with the work as soon as we could.

Q. That was in November; the weather was pretty cold?

A. Yes, sir.

Q. And you exposed yourself and put yourself to all that trouble and then came here and spent how much as a witness; how much time did you lose being here as a witness?

948 A. Probably ten or twelve days.

Q. How much money were you out from the time you started to visit that mine until the ten or twelve days were over?

A. That I could not say.

Q. You never asked Silva to compensate you, and never asked any compensation, and never expected any compensation?

A. I never expected to get any.

Q. Why not?

A. Because I was compelled to come.

Q. Did you think you were compelled to go to the mine?

A. No; I went there in such a way——

Q. Who asked you to go?

A. Mr. Silva asked me here if I would go over to the mine; if I would take the buckboard and take some men over there. I told him certainly I would. He said, "We want to go over; we are going over to survey the mine, and I want you to go over." I said, "All right." I had no idea he was going to take me in the mine. I said, "I will go." When he came to Darwin he said to me: "You are not going back on me and not go to the mine?" I said no. I did not then particularly know that he wanted me to go in and examine the mine. I said, "Frank, I do not like to go; I do not want to have any trouble; I would rather do anything than go, but I have promised you and I suppose I will have to go."

Q. Do you mean to say when you promised him and went into the mine you did not know that they wanted you for a witness?

A. After I promised to go there?

949 Q. What did you mean by saying he asked you if you wanted to go back on him?

A. Because McKenzie promised to go, and afterwards did not go.

Q. What did you understand from him when he asked you if you were going back on him?

A. If I was not going in the mine.

Q. That is to say, if you refused to be a witness in his behalf; is not that what you understood?

A. No, sir.

Q. Did not you understand from him at that time that he meant to ask you if you were going to refuse to be a witness in his favor and for him?

A. No; I had no idea that he wanted me to go there for anything, because I never had anything to do with the mine and did not suppose he wanted me to.

Q. When you knew he wanted you as a witness you did not refuse to go into the mine?

A. He did not say he wanted me for a witness at all.

Q. You knew he did.

A. He said he wanted me to go in and examine the mine with him.

Q. You knew he did want you as a witness?

A. I thought probably he did.

Q. Did you tell him, then, you had no mining experience in lead mining, and did not know waste rock?

A. I told him I was not an expert.

Q. Did you tell him you had no experience in lead mining or lead ores?

A. I might have said so.

950 Q. What did he say to you then?

A. I do not recollect what he did say.

Q. You do not recollect what he said?

A. I think he said it did not make any difference.

Q. Do you recognize sample G?

A. I think I do.

Q. Did you break it off in the mine?

A. Yes, sir.

Q. Did you break it off yourself?

A. Frank and me.

Q. Did you break it off?

A. Frank Silva broke it off with a club; him and me were together there.

Q. Describe what part you did and what part Frank Silva did.

A. I could not describe it exactly.

Q. Tell us how Frank Silva broke it off, if he broke it off.

A. I think he broke it off with a stick of scantling.

Q. You picked it up?

A. Yes, sir.

Q. You had nothing to do with breaking it off?

A. I was right there.

Q. If John Alexander swears he broke that off on the 6th or 7th of June in this year he is mistaken?

A. I do not know if that is the piece of ore. It looks very much like the piece of ore. It has been a long time since I have seen it. It is very much like it.

Q. If John Alexander testified to anything of the kind is he wrong or are you wrong?

A. I could not say what knocked that off.

Q. If he said so the fact is you do not know anything about it?

951 A. That looks like the piece of ore that was knocked off with the piece of scantling.

Q. If John Alexander swears he knocked that off himself on the 7th of June the fact is you are mistaken; or does John Alexander tell that which is not true?

A. I am not mistaken about my being there.

Q. If that piece of ore—will you swear positively that you saw Frank Silva break that off or not?

A. That looks like the piece of ore we were breaking off there together.

Q. Could you tell it from any other piece of ore from its size and color; are there any particular marks on that by which you can identify it as the piece knocked off in November, 1884, by Frank Silva?

A. It is a long time since I have seen the piece of ore. That looks very much like it.

Q. Is there any mark on that piece of ore by which you are able to identify it as the piece knocked out of the mine by Frank Silva in November, 1884?

A. I think there is.

Q. What is it?

A. There was a pick mark on it.

Q. Do you find that pick mark there?

A. There is a mark there; it looks like a pick mark.

Q. Is there any mark there by which you could swear to that piece of ore?

(Objected to by respondent as irrelevant, immaterial, and incompetent and a repetition of the former question. The witness
952 distinctly answers that the mark is there to be seen.)

(Counsel for complainant objects to counsel's statement of fact beyond the mere objection.)

A. There are marks on it.

Q. I ask you a simple, plain question: Are there any marks there which enable you to swear that is the piece of ore knocked off in that mine by Frank Silva in November, 1884? Answer yes or no.

A. I could not swear to that mark. It is just such a mark as was on that piece of ore.

Q. Answer my question. Can you identify that piece of rock as the piece knocked off by Frank Silva with the scantling, as described by you, in November, 1884?

A. I think that is the same piece.

Q. Are you able to swear to it? I do not care about your thoughts.

A. The piece of ore has been away so long that I could not swear positively.

Q. When you do not know a thing why do you not say so? I do not care about your thoughts. I want your knowledge. You ought to be able to distinguish between your thoughts and what you positively know. Answer my question once and for all. Do you know that to be the piece?

A. I cannot swear that is the one.

Q. Then you do not know?

A. I cannot swear that is the one.

Q. Do you know it or not? If you do not you can say so.
953 Why do you hesitate? Are you afraid you will hurt the—do you know that to be the piece or not?

A. It is very hard for a man to swear to a piece of ore, even if he is satisfied in his own mind. I am satisfied in my own mind it is the same piece.

Q. Why don't you say you swear or do not?

A. I do not.

Q. Do you know it?

A. I cannot swear it is the same piece.

Q. Do you know it to be the piece of rock? Will you answer that question?

A. I do not know it to be the piece of rock. I might swear that that is not the piece of rock and it might be. I do not know but what it is, and I do not know that it is. It is picked around so much that I could not tell.

(A recess is here taken to to-morrow, Friday, June 19, 1886, at ten o'clock a. m.)

954 FRIDAY, *June 19th*, 1886.

(Counsel and parties met pursuant to adjournment.)

CHARLES ANTHONY recalled for further cross-examination.

Mr. REDDY:

Q. With whom did you visit the mine the last time?

A. With Mr. Eddy.

Q. J. C. Eddy?

A. Yes, sir; and Fitzgerald.

Q. Frank Fitzgerald?

A. Yes; Frank Fitzgerald and Mr. Miner, I believe.

Q. Do not you know if Mr. Miner was there or not?

A. No; it was Mr. Alexander.

Q. How long did Mr. Alexander remain there?

A. He went over, I think, once before I did. I am not certain about that.

Q. I want to know if he was with you.

A. Yes, sir.

Q. Are you positive about that?

A. Yes, sir.

Q. Did he go into the mine with you?

A. Yes, sir.

Q. If Mr. Alexander says you were not with him he is mistaken, is he?

A. Yes, sir.

Q. You are that positive?

A. Yes, sir.

Q. Did you have a book to make memorandum of where you examined the mine and where you took ore from?

A. Yes, sir.

Q. Where is that?

A. In my pocket.

955 Q. Let me see it?

(Objected to by respondent as irrelevant, immaterial, and incompetent and the counsel has no right to ask for it. It has not been offered in evidence by us and is a mere private memorandum with which the witness can refresh his memory; however, if counsel desires to look at it I will withdraw my objection.)

Q. Let me see it?

A. There it is (producing).

Q. The memorandum that you have entered in this book on this page is all you made?

A. Yes; at that time.

Q. Those are the only times you visited the mine, on June 7th, 1886——

A. Yes, sir.

Q. Or at any time since November, 1884?

A. Yes, sir.

Q. Did all the witnesses have a memorandum book and make like entries?

A. I think they did.

Q. It was all understood between you that you should make memorandums?

A. I took mine.

Q. I ask you if you all had books?

A. Yes, sir.

Q. It was understood you should all make entries of the points you visited?

A. Mr. Eddy told me I had better take a book along. He handed me that book and I took it with me.

Q. Did you all make memoranda of the points you visited?

A. I believe we did.

Q. That was so that there should be no difference in your testimony?

A. No, sir.

Q. Then what was the purpose of your all taking a book?

A. I do not know that they have it down the same as mine.

956 Q. At every point you visited it you pulled out your books and conversed about what was there?

A. Yes, sir.

Q. And made entries of the fact that you visited such a point and what you saw there?

A. Yes, sir.

Q. And you all agreed on what you saw there first before you made the entry?

A. On most of the points.

Q. And you all came to the same conclusion?

A. I do not know if we did.

Q. You discussed what was in sight at each point?

A. I do not know what they agreed on. I have never seen their books and do not know what they have got in them.

Q. It was agreed, verbally, what was in sight between you?

A. Yes, sir.

Q. You all came to the same conclusion and all agreed to swear to the same thing?

A. No, sir.

Q. You all agreed to swear to the same thing?

A. No, sir.

Q. Did you not agree on what was in sight?

A. Yes, sir.

Q. Did not you understand from all the others that they were there for the purpose of getting information to which they would swear in court?

A. So that we could understand it, that is what we put it down for.

Q. You expected all the others to swear exactly to the same facts as you swore to?

A. I do not know.

Q. Did you not talk it over and agree on the ground what there was in sight?

A. Yes, sir.

957 Q. Was it not understood that that was what you were to swear to?

A. No, sir.

Q. Did you not understand that the others would swear to what they had agreed on there?

A. No.

Q. Did you understand that they would swear to something else than what they agreed on there?

(Objected to by respondent as irrelevant, immaterial, incompetent, and not in cross-examination.)

A. I did not know anything about that. There was no understanding about what we would swear to.

Q. Were not these memoranda made so that you could not be broken up on cross-examination—so that you could all remember the same points and swear you visited the same points and swear what was to be seen at each of those points?

A. There was nothing said about swearing to any point. It was agreed upon what we saw.

Q. You expected each man who visited there to swear to what you agreed on and what you saw?

A. I never took a thought of that, whether they would or not.

Q. Did you not always know you would be corroborated by the other men who were there with you?

A. I suppose I would.

Q. Who furnished you with the book?

A. Mr. Eddy handed me the book just as I left.

Q. Did he hand any one else a book?

A. I do not know whether he did or not; I do not know whether he gave Fitzgerald a book or not.

958 Q. You said as you visited each point in the mine each witness took out a book and made entries; was it the same kind of a book?

A. I think so.
Q. All alike?
A. I am not certain about that.
Q. Did they all make their entries on the same page in the book?
A. That I do not know.
Q. Is there any other matter in this book except concerning the mine?
A. Yes, sir.
Q. When was it entered?
A. I have put in other articles since.
Q. Since when?
A. Since I was out of the mine; nothing in regard to the mine.
Q. Is it not something in regard to this suit?
A. No; I have just got a little momorandum of articles I wanted to get.
Q. Not concerning this matter in any way?
A. No.
Q. Is all of the entry on page 13 of this book—memorandum book—in your handwriting?
A. Yes, sir.
Q. Were the entries all made at the same time?
A. Yes, sir.
Q. All made by the same means?

(Objected to by counsel for respondent on the ground that the book shows for itself how they were made. Counsel offers the book in evidence as being the best proof of what it is, how it looks, and and everything about it.)

A. Over there (pointing)?
Q. Yes.
A. No, sir; I put it down so that I could see it clearly.
959 You will see it on the other page there. I put it down in the first place with a pencil, and then, so as not to have it rub out, I put it down with a pen when I got home.
Q. Is it an exact copy?
A. Yes; as near as I could get it there.
Q. The entry first made is on page 11?
A. Yes, sir.
Q. And copied it in ink and put it on page 13?
A. Yes.
Q. Have you any objection to tearing out those two leaves so as not to encumber the record with the whole book?
A. No.

(The two pages are marked "Respondent's Exhibit N and O.")

Q. Did Silva have a memorandum book?
A. Not that I know of.
Q. Who had the books?
A. Eddy and Fitzgerald.
Q. And yourself?
A. Yes, sir.

Q. Did Alexander have one?
A. I do not think he did.
Q. Did you see him making any entries in any book at all while you were there?
A. Not that I recollect of.
Q. You did not have a book when you were a witness in a case of The People *versus* Frank Silva—the criminal trial?
A. No.
Q. You did not have any memorandum book on that occasion?
A. No, sir.
Q. What was the occasion of all three arming yourselves with memorandum books?
A. So that I could understand it thoroughly.
Q. Was not there an understanding and an agreement that you should all act and swear alike, and that you made these
960 memorandums so that there would be no difference between you?
A. No; there was never anything of that kind talked of.
Q. But was it not understood?
A. No; they never said anything to me about it; we took memorandums ourselves so that I could thoroughly understand how it was—how the ore stood in the mine.
Q. Without the aid of that memorandum book and without studying it since you have visited the mine could you have testified as you have?
A. I think I could.
Q. Did you make a thorough examination of the mine in question, from the surface to the lower workings, on this last occasion, June 7th, 1886?
A. No.
Q. From what points did you examine—from the tunnel down?
A. Yes, sir.
Q. But not up?
A. The southwest drift.
Q. You did not go above the tunnel level?
A. We went up to that raise.
Q. What raise; can you tell without looking at your memorandum?
A. I do not know that there is any number on that raise.
Q. How high up is it?
A. I should judge about 15 or 18 feet.
Q. And no higher?
A. No.
Q. None of you went up on this particular occasion higher than that?
A. No.
Q. Is there more than one kind of rock in that vein?
A. It is mostly one kind.
Q. Is there but one kind there?
A. I could not say that there is not but one kind.

Q. Do you know? You made an examination of the rock in the vein.

A. I looked at the rock.

Q. Did you see more than one kind of rock; more than the kind you have brought here?

A. There was very little lead ore.

Q. I am not asking you about lead ore. You brought some ore here?

A. Yes.

Q. That is lead ore?

A. Yes.

961 Q. I ask you if there is any other kind of rock in that vein?

A. I do not think there is.

Q. It is all lead ore?

A. Pretty much.

Q. How wide is the vein?

A. Whereabouts?

Q. Say the widest place at any of the points you visited.

A. It is about a six-inch ledge with ore all through it on the upraise.

Q. Is that the largest place that you saw?

A. No, sir.

Q. I asked you for the largest, the thickest.

A. Between three feet and three and a half.

Q. And all ledge ore?

A. Not all of it; it was mixed. I do not know if it was all ore; ore mixed through it all.

Q. Mixed through what "all?" If there was only one kind of rock there how could there be any mixture?

A. I would not say there was any more than one kind.

Q. Did not you say a moment ago that you did not observe but one kind of rock there and that was the kind of which you brought a sample here?

A. I believe I did.

Q. Now, then, that which you brought here you understand to be lead ore, don't you?

A. Lead ore or carbonate ore.

Q. Either carbonate or galena is lead?

A. Yes, sir.

Q. Carbonate ore is just as much lead ore as galena is?

A. Yes, sir.

Q. The fact is, then, that you only saw one kind of rock in that vein, the sample of which you have brought here

962 marked "M." Is that true?

A. It is all similar.

Q. Did you not testify yesterday that the ore is very much scattered through the mine and mixed with other rock?

A. Of course, the ledge is mixed with other rock; the ore is mixed with other rock.

Q. I am speaking to you now of through the vein; if within the

vein there is any kind of rock except such as the sample which you have brought here?

A. This ore is the only kind of ore I saw mixed in through the vein; there may be other rock in it.

Q. I ask you what the vein is composed of. Is there any other kind of rock in the vein than the sample which you have brought here?

A. I suppose there is.

Q. I ask you if there is; did you observe close enough to see?

A. I do not know as I did.

Q. If there is any other kind of rock, then, in that vein than sample M you did not observe it; is that the fact?

A. I did not notice it in particular.

Q. And not sufficient to be able to say whether there is any of that kind of rock or not; in the vein, I mean?

A. I suppose there is other kind of rock.

Q. In the vein?

A. In the ledge.

Q. In the vein?

A. Yes; there is waste.

Q. Did you not say a moment ago your examination was such that you could not determine whether there was other rock in the vein than the sample you brought here?

A. I said I supposed there was other rock; I am not pos-
963 itive.

Q. There may be or may not be other rock in that vein than such as you have brought here, for aught you know?

A. Yes, sir.

Q. How long were you in the mine in this examination made in June?

A. I could not say exactly; not over two hours and a half.

Q. How many candles did you burn, if more than one?

A. I did not burn one.

Q. How much candle did you burn—half of it?

A. Probably.

Q. Have you mined long enough to tell how long a candle will last under ground in such a place as that, where there is no greater draft than where you were?

A. It is all owing to what kind of a candle it is.

Q. What kind of a candle did you have; are you an expert in candles?

A. I know a good one from a poor one.

Q. How long will an ordinary candle last under ground in a place where there is no more draft than there was at the points you visited in the Stirling mine?

A. On an eight-hour shift, where there is not much draft, a good candle will last a shift.

Q. That is the result of your observation in mining?

A. I think it will last about eight hours.

Q. Where did you ever find an ordinary mining candle that will last eight hours?

964 A. I am not positive of that.

Q. Do not you know a candle will not last over three hours?

A. No, sir.

Q. Have you ever worked a shift in any mine in your life?

A. Yes, sir.

Q. How many candles would you take with you to work as an equipment for the first half shift?

A. Two, generally.

Q. You would burn them out?

A. Sometimes I would take more.

Q. Why did you take more than you wanted?

A. Sometimes we would use one or two.

Q. In half a shift?

A. We would burn two at a time.

Q. Would the candles last for more than half a shift?

A. Yes; I think it would; I am not positive.

Q. Do not you remember?

A. No; I never paid enough attention to it to know exactly.

Q. Then if you only burnt half a candle while you were in the Stirling mine the fact is you were not there two hours?

A. I could not swear positively what length of time I was there.

Q. How thick was the Stirling vein?

A. It varied.

Q. The average points that you examined?

A. Some places six inches, and some places two and a half feet to three feet.

Q. Do you know what a vein is?

A. I call it a ledge.

Q. I ask you if you know what a vein is?

965 A. I know what they call a vein.

Q. What who calls a vein?

A. Every one, most.

Q. Very well, what is it?

A. It is a streak or strata; I could not explain it to you; I do not know enough about mining.

Q. You do not know anything about it?

A. I do not think I could explain it to you.

Q. You are mistaken, then. You do not really know what any one calls a vein?

A. I do not know enough about mining to explain.

Q. Did not you say a moment ago you knew what every one calls a vein?

(Objected to by respondent as immaterial, irrelevant, and assuming something not in evidence. The witness has stated he knows what a vein is, but never stated he could give a definition.)

Q. Do you know what a vein is?

A. I cannot go on and explain that.

Q. I ask you if you know what a vein is; never mind the explanation.

A. Yes, sir.
Q. What is it?
A. As far as I know——
Q. I simply ask you to state what it is.
A. It is a vein or a streak running through other ledges. Sometimes it runs through other ledges, and sometimes it does not. I do not understand well enough to explain the thing to you; I
966 know what they have always called veins and streaks; at the same time I cannot explain it.
Q. When you speak of ore you speak of it with the definition given to it by Mr. Miner when he was making his examination-in-chief; is that so?
A. The ore?
Q. When you speak of ore what do you mean; do you mean what Mr. Miner defined it to be?
A. I mean ore; anything that has got any mineral substance in it.
Q. Whether it will pay or not?
A. Yes; I do not know whether it will pay or not.
Q. I simply ask you what you call ore; you have said "anything that contains any mineral substance?"
A. Yes, sir.
Q. I say whether it will pay or not?
A. Yes, sir.
Q. All mineralized rock, then, is ore, in your estimation?
A. Anything that has got mineral in it would be ore, I should think.
Q. And no matter what kind of mineral?
A. No; so as it is mineral.
Q. Then all rocks are mineral, are they not?
A. No; there is not mineral in all rocks.
Q. I ask you if you do not know that all rocks are mineral?
A. They probably have something——
Q. Answer my question. Do you or not know that all rocks are mineral?
A. No, sir.
Q. You do not know that?
A. No, sir.
967 Q. If all rocks are mineral, then all rocks are ore, are they not?
A. I do not suppose all rocks are mineral.
Q. If all rocks are mineral then all rocks are ore, are they not?
A. All rocks that have got mineral in——
Q. Would be regarded as ore?
A. I think so.
Q. Now, then, I ask you this question: If all rocks are mineral, then, in your estimation, all rocks would be ore, would they not?
A. No, sir.
Q. Why not?
A. All rock that has mineral in it I consider that it is metal of

some kind. I do not consider that limestone or granite has mineral in — or is of any value.

Q. All rock which you find within the walls of a vein or lode or deposit carrying mineral, silver, lead, or gold you would regard as ore, would you not?

A. Yes, sir.

Q. No matter how small the percentage of either metal might be in the rock?

A. I would consider it very poor ore.

Q. You would regard it as ore?

A. Yes; I believe I would.

Q. Have you had sufficient mining experience to know that in nearly every mine there is a large percentage of the vein matter thrown away as waste?

A. Yes, sir.

Q. And the vein matter or rock would carry a certain percentage of the mineral sought after in the mine?

A. Yes; as a general thing.

968 Q. And until the rock carries a sufficient amount of percentage of the metal sought for it is treated the same as the lime rock or the country rock and thrown away as waste, is it not?

A. Yes, sir.

Q. And it is not, in a mining sense, called ore; it is all thrown away as waste?

A. They throw it away and treat it as waste.

Q. All ore that does not pay at the particular place where the mining is carried on is treated as waste, is it not?

A. Yes, sir.

Q. And called waste?

A. Yes, sir.

Q. And that which does pay is called ore; is not that the fact?

A. Yes, sir.

Q. And in every mine you have ever seen or heard of that is the way the rocks are classified; the general classification is the one which will not pay for extraction or reduction is regarded as waste and thrown away?

A. I have known men to go to work and throw a lot of stuff away that they called waste and gone to work and sorted it over again.

Q. That which is thrown away is treated as waste?

A. Yes, sir.

Q. What would be ore in one mining camp would be waste in another on account of the difference in price, cost of extraction, and reduction. Is not that so?

A. Yes; you might call it waste.

Q. Would not that be so, practically?

A. Yes, sir.

969 Q. When you speak of ore in the Stirling mine in what manner do you speak of it; anything that carries mineral?

A. Yes; anything that carries mineral.

Q. Then you do not mean to draw the distinction, in speaking of ores in the Stirling mine, between that which will pay and that

which will not pay; between that which would be treated as waste and that which would be treated as ore by the persons seeking the mine?

A. No; for I do not know what would be waste.

Q. It may be the greater portion of that; in fact, all which you have observed and called ore might, in a mining sense, be treated as waste; is not that the fact?

A. All owing to where it would be worked and at what expense.

Q. Do you mean to figure out to me that you could reduce that which you call ore on the ground or at any point on earth and make it pay?

A. I cannot say that I could.

Q. You do not know whether it would be waste, then, or ore?

A. It is ore, but whether it would pay or not I could not say.

Q. In the classification which miners make of the vein rock you do not know whether this would be ore or whether it would be waste, do you, for the reason that that question depends upon what will pay and what will not pay of the vein rock?

970 A. It might not pay, and you might throw it all away.

Q. If it will not pay that is waste?

A. It might not pay there.

Q. If it will not pay anywhere, in view of the cost of extracting it and carting it to the particular point, then it would be waste?

A. I should call it ore; some of it.

Q. If it would not pay by any known process or by any treatment to which any ore is now subjected would you then call it ore, in a mining sense?

A. I should call it ore, but at the same time it would not pay to work.

Q. I have asked you already if, as a miner, you have not learned that that part of the vein which will not pay is not regarded as ore, in a mining sense. Have you not so stated?

(Objected to by respondent on the ground that it is a repetition and is immaterial, irrelevant, and incompetent; that the witness has answered the question fully before.)

A. I should call it ore.

Q. Why do you call it ore; do you mean to say that you know that ore will pay?

A. I do not know if it will pay.

Q. Do you know whether that ore will pay or not?

(Objected to by respondent on the ground that it has been answered several times *for* the witness and is immaterial, irrelevant, and incompetent.)

971 A. I could not tell you whether it would pay or not.

Q. If it will not pay, then it is waste, in a mining sense?

(Objected to by respondent on the ground that it assumes a fact not in evidence and seeks to insist on an answer from the witness when he has already answered several times.)

A. I should call some of it ore.
Q. Do you know whether any of it will pay or not?
A. No, sir.
Q. Have you not stated that, in a mining sense, the ore which will not pay is regarded as waste?
A. We often throw ore away.
Q. Answer my question. Have you not said that, in a mining sense, the ore which will not pay is regarded as waste?
A. Yes; they call it waste.
Q. It is waste, is it not?
A. In one sense of the word.
Q. In the mining sense of the word ore which will not pay it is the sheerest kind of waste to work?
A. Very true.
Q. If you do not know whether this rock will pay or not you do not know whether it is waste or ore, in the mining sense, do you?

(Objected to by respondent as repetition.)

A. I should call that ore.
Q. If you do not know if it is waste or ore you do not know whether it will pay or not, in a mining sense?
A. I call it ore.
Q. I ask you to answer my question.
972 A. I thought I had answered the question.
Q. Answer it again.

(Objected to by respondent on the ground that the question has been repeatedly answered by the witness, and it is a useless repetition.)

A. I am satisfied that is ore.
Q. I simply ask you to answer my question; I do not care what you are satisfied about.
A. I say I consider it is ore.
Q. I ask you to answer my question.
A. Yes, sir.
Q. You do?
A. Yes, sir.
Q. Then can you say whether it is ore or not without referring to whether it will pay or not, in a mining sense?
A. I can tell by the looks of the ore that there is mineral or metal of some kind in it.
Q. I ask you if you do not know whether it will pay or not; can you say whether it is ore or not, in a mining sense?
A. It may not pay, but it may be ore all the same.
Q. May it be ore in a mining sense?
A. They may call it ore and it may not pay, for all that.
Q. You have already stated, in a mining sense, that that which will not pay is waste; have not you said that?
A. They call it waste; there is no metal in it.
Q. I understand; is that which will not pay waste?
A. You cannot work it to advantage.

Q. It would be worse than waste to work it?

973 A. That is so.

Q. If ore will not pay do you call it ore, in a mining sense?

A. A man will naturally go in a mine——

Q. I ask you a plain, straight question.

A. That is what I would call it—ore.

Q. Whether it would pay or not?

A. Until I knew better.

Q. In a case where you were interested, in calling it ore, you would call it ore until the contrary was proved by you; but if you were interested in having it shown that it was not ore, then you would insist on the party proving it was ore, would you not?

A. No, sir.

Q. You would not?

A. No, sir.

Q. Every piece of rock that there is mineral in you say would be ore until the contrary is proven?

A. I do not know whether it would be.

Q. If you have a reduction works and a man would show you a pile of rock—one hundred or one thousand tons—and you knew there was mineral in it you would go to the expense of taking it to your place and reducing it on the theory that it must be ore until the contrary is proven?

A. I do not know as I would.

Q. That would be a foolish thing to do?

A. Yes, sir.

Q. Would you act upon such a theory as you have suggested here—that all rock containing mineral is presumed to be ore until the contrary is proved?

974 A. I should consider so.

Q. You would consider that all rock found in a mineral-bearing vein would pay until the contrary was proved?

A. That showed mineral that a man could see.

Q. Would you act on that theory either in working ore or working a mine? Would you go right along and presume that because you found a vein containing more or less mineral; would you go right along and sink a shaft a hundred feet without ascertaining whether it was ore?

A. No, sir.

Q. Then you would not act on any such theory as you propose here?

A. I would want to know whether it would pay or not before I went to sinking.

Q. You would not know whether it was ore or not until you determined whether it would pay?

A. I might know it was ore and it might not pay.

Q. You would not act on the theory that it would pay until it was proved?

A. No, sir.

Q. Then the reason why you say you presume this is ore until it is shown not to be ore is because you want to establish the fact, and

you are brought here as a witness to establish the fact that that is ore; is not that so?

A. I do not know whether I would or not. I come here to tell what I think is right and what I know.

975 Q. Were you not called by Mr. Silva to go to that mine for the purpose of examining it, and did you not understand that you were to search round for ore, bring it here and prove it; prove first that you found rock in that mine; and, second, that it was ore? Was not that what you were called for?

A. I went there to examine the mine.

Q. Answer my question. Were you called for the purpose of showing there was ore in that mine, or to show there was no ore?

A. I was called to see whether there was ore or whether there was not.

Q. Did you find any waste in the mine?

A. I expect there is plenty of waste there.

Q. Why did you not bring something that you thought was waste as well as ore if you were called for the purpose of giving impartial testimony and showing what there was there?

A. I did not know I had occasion to bring any waste.

Q. Were you called there for the purpose of sampling that vein and bringing all classes of ore that you found there and showing it?

A. All classes?

Q. Yes; the vein rock.

A. I was not taken there to bring in samples in particular.

Q. You were not taken there to bring in any waste?

A. I expect not.

Q. You did not hunt for any waste?

A. I saw plenty.

Q. I ask you if you were hunting for waste?

A. No, sir.

976 Q. What were you hunting for?

A. I was hunting through the ledge to see what we could see.

Q. Were you hunting for ore?

A. Yes, sir.

Q. You did not bring anything but what you regarded as ore?

A. No, sir.

Q. Did you not take particular pains to show there was ore there, while you took no pains to show there was waste?

A. I supposed I was to do my duty and to do what I thought was right.

Q. Do your duty to whom?

A. Any party.

Q. If you wanted to show what there was in this vein why did you bring a piece of ore without bringing any waste?

A. I was not authorized.

Q. Were you not authorized to take any samples you wanted to?

A. Yes; any samples of ore.

Q. Did you not have the liberty and the right to bring samples of waste?

A. Yes, sir.
Q. Why did you not do it?
A. I did not think of it.
Q. You had but one thought in your mind, then, and that was to find ore and bring it here?
A. I did not suppose it was necessary to bring any waste.
Q. Did you not think it was necessary to show what kind of a vein there was, whether good or bad?
A. Yes, sir.
Q. Why did you not bring something that would show both sides of the question? Is it not the fact that you went there with the determination to find ore if you could bring it here,
977 swear to it, and prove there was ore in that mine? Was not that your purpose?
A. No; I did not go there with any determination to do anything wrong.
Q. Answer my question. Did not you go there for the purpose of finding ore, bringing that ore here, and proving there was ore in that vein?
A. No, sir.
Q. Was not that your sole purpose?
A. I do not know as it was.
Q. Did you not say yesterday that the ore was very much scattered through the mine and mixed with other rock?
A. It was mixed with what you call waste.
Q. Badly mixed?
A. Yes; it was mixed up in places considerable.
Q. What percentage of ore would there be in that waste, if you know?
A. I could not say.
Q. You did not notice that?
A. I could not say.
Q. You did not notice that?
A. If I had noticed it I could not have told.
Q. You are not miner enough to determine what percentage of ore could be found in the vein?
A. I could not. I could not tell what amount there was.
Q. Could you tell whether there was one pound of ore to twenty pounds of waste?
A. I think so. I think there might have been. I think there was all of that, anyway.
Q. Then there might be, for aught you know, fifty pounds
978 of waste to one pound of ore?
A. I could not say.
Q. And there might be, for aught you know, a hundred pounds of waste to one pound of ore?
A. I could not look into the ground to see.
Q. As it appeared on the face. I am not asking you to look into the ground.
A. I could not tell.

Q. There might have been three hundred pounds of waste, so far as you know?

A. There might have been.

Q. How thick was the entire vein at any one point, including vein rock and everything?

(Objected to by respondent on the ground that the question has been asked and answered several times, and that it is immaterial and irrelevant.)

A. Two and a half feet to three and a half feet.

Q. Within that vein you have already answered as to the percentage of ore that there may be three hundred pounds of waste to one pound of ore?

A. That I do not know.

Q. There might have been six hundred pounds of waste to one pound of ore, as far as you know?

A. That I could not tell.

Q. There might be a ton of waste to ten pounds of ore, for aught you know?

A. I could not tell you what amount of ore there was there.

Q. Badly scattered, then?

A. Yes, sir.

Q. You say you have handled ores in your time?

A. I have, a little.

Q. If you were to put two hundred pounds of ore in a ton
979 of waste would it not be very difficult to find the ore if it was broken up fine?

A. I think so.

Q. The probability is you could not tell there was any ore there if it was broken up fine?

A. I expect so.

Q. Can you tell waste from ore, in a mining sense, by looking at it?

A. I think I can.

Q. I am asking you if you can?

A. I know some ores——

Q. I ask you if you can tell carbonate ore from vein rock in lead mines?

A. I think I can.

Q. How do you do it?

A. By the weight of it.

Q. Have you ever seen iron rock in lead veins?

A. Yes.

Q. Do not you know that iron rock is sometimes much heavier than carbonate ore?

A. Yes, sir.

Q. How can you distinguish between iron rock and carbonate ores if the iron rock is heavier than the carbonate ore?

A. The only way I could tell is the iron is so much harder than the ore would be.

Q. Do not you know iron rock occurs in just the same sort of con-

ditions that carbonate ores occur in, and the carbonate ores occur in the hard as well as in the soft formations?

A. Yes, sir.

Q. If they lack in weight how can you tell by the weight?

A. I do not know as I could.

Q. The fact is that you cannot go into any lead mines and determine what is ore and what is not by looking at it?

980 A. I could tell you some ores; I could not tell all the ores.

Q. Then it would be after you had been taught which was the ore and which was not?

A. I can tell a piece of lead ore.

Q. I am talking about carbonate ore and iron ore.

A. You can take iron and galena and carbonate and pound it up together and I do not suppose I could tell the one from the other.

Q. Have you not been in a great many lead mines where you could not tell the difference between iron rock and carbonate ores?

A. Yes; there are places, of course.

Q. Where are those places?

A. I expect most anywhere in the country.

Q. You say you know that is the fact. Where did you ever see it?

A. I do not know it to be a fact; I say I do not suppose I could go in and tell.

Q. Could you go into a mine in this country or any other country and distinguish certain carbonate ores from certain iron rock?

A. Certain carbonates I could.

Q. What kind?

A. Something like this here.

Q. Where the iron rock and the carbonates are of the same color could you tell the difference?

A. I do not think I could.

Q. Is it not a fact that there is iron rock in the Stirling mine?

A. Yes, sir.

981 Q. Is it not the fact that it is precisely the same color as the carbonate ore?

A. I do not know but what it is.

Q. Is it not the fact that they are the same weight?

A. I could not say whether they are the same weight or not.

Q. Is it not the fact that the carbonate is much lighter than the iron?

A. I presume likely.

Q. If that is the case how can you tell iron from the carbonate in that mine?

A. There are only certain kinds of carbonate.

Q. I am talking about the ores in the Stirling mine.

A. I could tell by the lead that is in it.

Q. Without the appearance of any lead do you mean to say that all the carbonates give the appearance of lead?

A. No, sir.

Q. Between those carbonates which do not show the lead and the iron could you tell the difference?

A. No, sir.

Q. Answer my first question. Can you tell waste from ore always, in the mining sense?

(Objected to by respondent on the ground that the question has been answered by the witness to the best of his ability.)

A. It is always considered where there is waste and ore together; it is all called ore when it is taken out of the mine; that which will pay is taken out.

Q. Can you tell waste from ore always?

A. I do not know that I could always.

982 Q. Can you tell the difference between the waste in the Stirling mine and the carbonate ore?

A. Some portions.

Q. How much experience have you had with the ores in the Stirling mine, which you visited in November, 1884?

A. I think I was in there about a day—somewhere near a day.

Q. You got over there in the evening, did not you?

A. I got over there, I think, somewhere in the afternoon.

Q. What time did you leave there?

A. I do not recollect what time it was.

Q. How many hours were you there altogether? You left that same night and went back to Darwin?

A. I could not say what length of time we were there.

Q. Would it exceed six hours?

A. I think so.

Q. Would it exceed ten hours that you were in the mine working?

A. I could not say.

Q. There was a survey made on that occasion?

A. Yes, sir.

Q. You went there to help make the survey?

A. Yes, sir.

Q. You did assist in making the survey?

A. Yes, sir.

Q. You carried the chain and held the light during all the time you were there, until the survey was completed?

A. Yes, sir; some portions of it.

Q. You were at work with the surveyor, assisting him, during all that time?

A. Yes, sir.

Q. The survey was made on which that map is built and that model?

A. I presume so.

983 Q. Do you mean to say you did anything else than assist the surveyor there while you were in the mine on that occasion?

A. Not that I recollect.

Q. The next visit you made to the mine was on June 7, 1886?

A. Yes, sir.

Q. And that was in the daytime, was it not?

A. Yes, sir.

Q. And how many hours do you say you were there on that occasion?

A. I could not say exactly.

Q. About how long?

A. About two hours, I guess.

Q. That is all the opportunity that you had to examine that mine?

A. Yes, sir.

Q. Then you assisted the surveyor in making his survey on which the map and model is based, and spent two hours afterwards going through the mine. Did you have any time to learn how to distinguish between ore and waste in that mine in that much time?

A. I could tell a piece of ore——

Q. I ask you if you learned while you were in that mine all that you know about distinguishing those ores from waste?

A. I do not know that I did.

Q. When you went there you did not know anything about distinguishing between ore and waste?

A. In the Stirling mine?

Q. Yes, sir.

A. No, sir.

Q. And all that you knew was what you learned during those two visits?

A. I had seen the ore on the dump before I went there.

984 Q. How long did you spend on the dump looking at the ore; you just gave it a passing glance?

A. I have been there different times.

Q. You never worked at it?

A. No, sir.

Q. Never touched it?

A. No, sir.

Q. Just looked at it as you passed by or stood around attending to other matters of business?

A. At that time?

Q. At any time.

A. That was all.

Q. That is all in the world you ever learned about those ores—what you learned on those occasions? Is that a fact?

A. Yes, sir.

Q. Do you mean to say that with such an experience you would be able to go into that mine, take down ore, and distinguish waste from ore and ore from waste, and classify the ores?

A. I think I could.

Q. You think you could?

A. Yes, sir.

Q. I am asking you if you could—what you know, and not what you think.

A. I would not be positive of that fact.

Q. You say there was ore on the 39-foot level?

A. Yes, sir.

Q. You examined that?

A. Yes, sir.

Q. When did you examine that?
A. On the 7th.
Q. Did you examine the ground above the 39-foot level to see whether the ore extended upward or not?
A. Yes; it did.
985 Q. How high up?
A. I should judge about 15 feet.
Q. What level did you examine it on? Above the 39-foot level did you do it?
A. It is on the raise on the 39-foot level.
Q. Indicate the raise which goes from the 39-foot level.
A. I do not know whether it is there or not.
Q. Is there any raise from the 39-foot level?
A. Yes, sir.
Q. If it is that model is wrong.
A. I do not know whether it is there.
Q. Is there any raise up from the 39-foot level?
A. Yes; there is a raise up.
Q. From the 39-foot level where does it raise to?
A. It raises up, I should judge, about 15 feet.
Q. Can you indicate on the model where that exists?
A. Where the 39-foot level is?
Q. The raise from the 39-foot level.
A. It is about 28 feet from the winze.
Q. What winze?
A. No. 2 winze.
Q. Then if there is a raise in that mine between winze No. 1 and winze No. 2 from the 39-foot level, then that model is not correct, is it?
A. I could not say as to that.
Q. Do you see any raise on the model?
A. No, sir.
Q. Is the model correct?

(Objected to by respondent on the ground that it assumes that what is there on the model is incorrect; the fact that the
986 model does not show that is no reason that this model, as far as it goes, is incorrect, and assuming something not in evidence. The witness has answered that the raise is 15 feet above that level and in the roof of the 39-foot level, and the model is the best evidence of what it shows for itself, and the evidence of this witness as to the model is secondary evidence.)

A. That raise is not there.
Q. If John Alexander swears there are no works between the 39-foot level and the main tunnel or any work above the 39-foot level which would show that the ore extended upwards, or from which it could be determined, then he is in error, is he?
A. I do not know.

(Objected to by respondent on the ground that it assumes a fact not in evidence, is misleading, is unfair to the witness, and is immaterial and incompetent and irrelevant.)

A. (Continuing.) I am swearing to what I know.

Q. You are so positive that there is a raise from the 39-foot level that if John Alexander, the surveyor, swears there is none you would contradict him, would you?

(Objected to by respondent as unfair to the witness, assuming a fact not in evidence and as misleading.)

A. I say there is a raise in the 39-foot level.

Q. How high up?

A. I should judge about 15 feet.

Q. Does the ore extend up that far?

A. I think it does.

Q. Do you know? Did you go up in that raise?

987 A. No, sir.

Q. How do you know how far it is up?

A. I told you I did not know. The raise is about 15 feet.

Q. Were you into it?

A. No; I did not go up into it.

Q. How do you know it is 15 feet?

A. As near as I could judge.

Q. How could you judge if you did not go into it?

A. I could tell by standing there.

Q. Did you hold your candle up?

A. You could look right up.

Q. Did you pay any particular attention to that at all?

A. Up above?

Q. Did you leave the 39-foot level and go up the raise?

A. No, sir.

Q. You stood on the 39-foot level?

A. Yes, sir.

Q. How did you know the ore extended up?

A. I did not say it extended up.

Q. You do not know whether it extended up above the roof of the 39-foot level or not?

A. It is over the roof. Whether it extended up to this raise or not I do not know.

Q. The 39-foot level connects with winze No. 1 and winze No. 2, does it not?

A. Yes, sir.

Q. Did you go through winze No. 1 from the 39-foot level

988 up to the main tunnel-level? You know what the main tunnel is?

A. I did not go through No. 1 winze.

Q. Did you go down or up winze No. 1?

A. No, sir.

Q. Did you go into winze No. 1?

A. I went into the winze on the level with the 39-foot level.

Q. Both of the winzes?

A. I was into the winze on the 39-foot level.

Q. Do not you know winze No. 1?

A. Yes, sir.

Q. Do not you know where it extends up to that level?
A. Yes, sir.
Q. Did you enter the mouth of that winze and go down to the 39-foot level?
A. No, sir.
Q. Or from the 39-foot level up?
A. No, sir.
Q. Did you go into winze No. 2?
A. Yes, sir.
Q. Did you go from its mouth down to the 39-foot level?
A. Yes, sir.
Q. Was there any ore in that winze?
A. Going down?
Q. Between the mouth and the 39-foot level—call it going down or going up.
A. I do not recollect seeing anything there.
Q. Then the ore in the 39-foot level does not extend above the 39-foot level in either of those winzes, so far as you know?
A. I could not say whether they extended any further up.
Q. What is the length of the 39-foot level?
A. It is 39 feet.
989 Q. Is that the length of it?
A. I think it is.
Q. Is it called the 39-foot level because it is 39 feet long?
A. I believe so.
Q. Or is it called the 39-foot level because it is 39 feet deeper than the level above?
A. It is 39 feet.
Q. Long?
A. That is what they call the winze, 39 feet.
Q. You say that the 39-foot level is called the 39-foot level because it is 39 feet long?
A. 39 feet from the main level.
Q. Did not you say a moment ago that it was called the 39-foot level because it was 39 feet long?
A. I might have said so; if I did I did not intend it.
Q. You say there is a continuous ore connection between the 39-foot level and the 55-foot level or ore chamber, do you?
A. Yes, sir.
Q. What do you mean by an ore connection?
A. What I mean is a strata or streak or body of ore.
Q. Do you know the difference between a strata, a streak, and a body of ore?
A. I do not know that I can explain it.
Q. Do not you know, or do you know, that there is a wide difference between a strata, a streak, or body?
A. Yes, sir.
Q. Which is there, a strata, streak, or body of ore?
A. I do not know; I should call it a body of ore.
990 Q. I ask you if you know. That is not an answer to my question. Do you know the difference between a streak, stratum, or body of ore?

A. I do not know but what I do. I do not know that I can explain it, though.

Q. How thick is the body of ore which runs, as I understand you to say, between the ore chamber and the 39-foot level?

A. Between two and a half and three feet.

Q. Is that all ore?

A. I cannot say as it is.

Q. What is it?

A. It may be waste; there is some in it.

Q. What you mean by the continuous ore connection is, that here and there through the vein rock ore is to be seen?

A. Yes, sir.

Q. But in what quantity? What percentage of the whole vein is ore you do not pretend to say.

A. I could not tell you.

Q. It may be in the proportion which we have heretofore illustrated, for aught you know?

A. I could not tell what amount of ore there is.

Q. You say sample G is a fair sample of the ore in the mine which you said was taken from the southeast corner, near that little shaft?

A. It looks something like it. I could not say that was a fair sample.

991 Q. What you mean to say is, that in the vein rock such ore as that may be found anywhere through the mine or through a certain portion from there up to the main level?

A. Something similar.

Q. Here and there in the proportion which you have heretofore mentioned?

A. Yes, sir.

Q. That is to say, you would not undertake to say what percentage of ore was in the vein, but pieces like that might be found there?

A. Yes, sir.

Q. Sample M is a small piece, is it not?

A. Yes, sir.

Q. And it was taken, you say, from the point where sample G was taken?

A. Yes, sir.

Q. But sample G was taken in November, 1884, and sample M on the 7th of June of this year; is that correct?

A. Yes, sir.

Q. Why did you bring such a small sample from your visit in June, 1886?

A. I did not want to be bothered with any more. I did not want to pack any more with me.

Q. Could you have taken some more down; did you see as large a sample there as G?

A. I do not think I broke anything as large as that.

Q. Did you look to see if you could find another sample as large as G at that point?

A. No, sir.

Q. You do not think you could conveniently find another one like that?

A. I think I could have found one just as large.

Q. Not of the same kind?

A. Pretty much the same kind.

992 Q. While we are at the southeast corner of the ore chamber I will ask you if you noticed if any work had been done there between your visit of 1884 and your visit of June 7, 1886?

A. Yes, sir.

Q. Had there been any work done there?

A. Yes, sir.

Q. In that corner?

A. It had been done in the chamber.

Q. Near that corner?

A. All through there.

Q. What was the nature of the work?

A. They had taken out dirt.

Q. Had they done any work on the walls?

A. I think they had.

Q. In the way of blasting down the sides?

A. There was some ore taken down that was not there when I was there the first time.

Q. What was to be seen back of the ore which was taken down?

A. About the same as it was when I first saw it.

Q. Was there any lime to be seen where the ore was taken down?

A. There might have been some lime in it.

Q. I understood you to say yesterday you did not observe any difference in the appearance of the chamber between your last visit and the first?

A. I did not, in the ledge. The ore looked about the same. Of course there has been some little work done, not to amount to anything; most of the work that I noticed being done was the waste taken out of the chamber.

Q. Was the floor of the chamber clean?

A. Pretty well cleaned up.

Q. So that you could see what was in the bottom?

993 A. I do not know but what a man could have told what was in the bottom.

Q. Did you examine it?

A. No, sir.

Q. Why did you not?

A. I did not know it was necessary.

Q. Were you requested to examine that floor by Silva?

A. Nothing was said about it, as I know of.

Q. You were simply directed to the side where you found this ore?

A. Where we saw the ore before.

Q. Mr. Silva did not ask you to examine the floor before to determine whether it was lime or not?

A. No, sir.

Q. Although it was cleaned up so that you could have done so conveniently?

A. If we had tools there we could. I did not notice the floor, whether it was cleaned up or not.

Q. Did you not just say it was cleaned up so that you could have examined it?

A. No; but we did not have any tools there.

Q. Did any of you examine it?

A. Not that I know of.

Q. You would have seen it if there had been any work done there?

A. We had no tools, only a pick.

Q. You would have known it if it had been done?

A. Yes; I think so.

Q. Can a man swing a pick on that floor without your observing it, you being in the chamber with him?

(Objected to by respondent on the ground that it does not appear from the testimony that he was in that chamber with those
994 parties at the same time.)

A. I think he could.

Q. If no one made an examination of the floor they did not call your attention to it?

A. No, sir.

Q. There was no request made in your hearing or presence to make such an examination?

A. Not that I know of.

Q. Did you make an examination of the little shaft running down and connecting with the 82-foot level?

A. I believe Eddy did.

Q. Did you?

A. No, sir.

Q. Were you requested to?

A. Not that I know of.

Q. Do you know lime rock from vein rock?

A. I ought to.

Q. I think so myself, but I do not know. That is why I ask you the question.

A. Yes; I think I can tell vein rock from lime rock.

Q. You have had more experience in lime rock than you have had in vein rock?

A. I do not think I have. I do not know but I have, too. There is more work done, though, in lime rock than in vein rock.

Q. What is the kind of rock around that mine in which that vein is found?

A. Granite lime.

Q. Granite? What is the kind of rock one ither side of the ledge, speaking of the Stirling mine?

A. I think it is lime.

Q. Are you not sure? Was your examination such that
995 you could not tell what rock was on either side of the vein?

A. I think it is lime.

Q. Now, look in the ore chamber, as represented on this model, and say if the sticks extending along from here, the southeast corner, on the northeast side of the ore chamber, represent the ore streak which you have been talking about as extending along that side of the ore chamber.

A. Yes; it represents it some.

Q. Does it look like it—a fair representation of the ore streak?

A. Something like it.

Q. What is the rock of which that wall is composed above the ore streak?

A. On the sides I think it is lime.

Q. I say from the streak up—from this streak on up?

A. On one side of it?

Q. I mean the northeast side from the ore streak up.

A. It looks like ledge matter.

Q. Is it lime or is it ledge matter? Can you tell lime from ledge matter? Did you not say a few moments ago you could?

A. I think I can.

Q. What is it? Is it ledge matter or lime?

A. Here it is.

Q. I say from the ore streak as represented on the northeast side of that chamber upwards in the chamber; what is that wall—lime or ledge matter?

A. As far as I could see there, it is lime.

Q. I ask you if you know if it was lime or ledge matter?

A. I am satisfied it was lime.

996 Q. What is the character of the rock from the lower edge of the ore streak down to the floor of the ore chamber on the northeast side—the same streak of ore that I have been speaking about?

A. The streak of ore runs down to the floor; I do not know how far down. It runs down as far as I could see.

Q. If it is all ore from the upper edge of the streak down to the floor, then the sticks do not represent the ore streak in that chamber that your attention has been called to?

A. It represents a portion of it.

Q. Do not the sticks represent the other portion?

A. A portion of it; yes.

Q. Did not you just say it was a fair representation of the ore streak?

A. I said it was something like it.

Q. You mean to say that the ore extended from the upper edge of that ore streak, as marked on the north side of the ore chamber, down to the floor of the ore chamber?

A. Right in here. That is supposed to be the body of the ore.

Q. I ask you now of what is the wall composed from the lower edge of the ore streak, going down in a vertical line to the floor of the chamber, from the middle of the streak—going straight down—not following the ore streak on down to the northeast corner, but taking it from the middle of the streak down to the floor of the ore

chamber? What kind of rock is there? Does the ore extend all the way down?

997 A. It runs down in this shape.

Mr. MINER:

Q. The northwest corner?

A. Yes, sir.

Mr. REDDY:

Q. Now, Mr. Anthony, I will ask you what the distance would be from the upper edge of the ore streak—say in the middle of the ore chamber—down to the floor of the ore chamber.

(Objected to by respondent on the ground that it does not appear from the question which side of the chamber is meant—north, east, south, or west; that the question is indefinite, uncertain, and unintelligible. The evidence sought to be elicited is immaterial, irrelevant, and incompetent.)

Q. On the northeast side?

(Counsel for respondent states that as, since his objection, the question has been amended to show which side of the chamber is meant, that portion of his objection is withdrawn.)

A. I could not really say the distance.

Q. About; I say from the upper edge of the ore streak as represented on that chamber; what is the distance down to the floor of the chamber, straight down, from the upper edge, drawing a line from the top of the chamber down to the floor at the centre on the northwest side; what would be the distance from the upper edge of the ore streak down to the floor?

A. On that side it might be twelve feet; I could not say exactly.

998 Q. The ore on that side would be twelve feet thick, would it?

A. No, sir.

Q. How thick would it be at that point?

A. At the point below?

Q. The point I have been describing—from the upper edge of the ore down to the floor of the ore chamber. What would be the distance?

A. It varies; at the upper edge, nearly three feet of ledge, and down at the floor it is only about eighteen inches.

Q. Do you mean to say there is not lime exposed below that ore streak marked on the northeast side of the chamber and between it and the floor of the ore chamber? Look and see how it is represented.

A. I think there is.

Q. I ask you now if you know.

A. It is all covered up with dirt and dust.

Q. It was all covered up with dirt and dust?

A. I do not know if there was lime there or not.
Q. Why—because it was covered up?
A. Because there was dirt and covered over with dust.
Q. You do not know what it is from there down?
A. I could not say.
Q. Did you not say it was all ore from the upper edge of the ore streak clear down to the floor?
A. All ore?
Q. Yes, sir.
A. No, sir.
999 Q. Did you not say the ore extended all the way from the upper edge of the ore streak, as marked on the northeast side of the ore chamber, down to the floor of the ore chamber? Did you not say so?
A. Yes, sir.
Q. If a portion of it was covered with dirt how did you know it was ore?
A. The ledge is not covered over with dirt. If there is any waste, whatever it is, I do not know whether it is lime or what it is. I did not pay attention.
Q. Do you mean to say that from the upper end of the stick on the northeast side of the ore chamber down to the southeast corner of the ore chamber is ore, all the way down from the upper edge of it down to the floor of the ore chamber?
A. Yes; there is a little ore in the vein.
Q. Does it as a streak extend down there?
A. Yes; I think there is a little ore all through the ledge.
Q. I ask you if the ore in a solid, continuous streak extended down to the floor.
A. All in a continuous streak.
Q. What do you mean, then, that there are blotches of ore frozen to another character of rock all the way down?
A. All scattered down through it.
Q. To what kind of rock does it adhere?
A. It looks to be ledge matter.
Q. Did you examine that rock to which the ore adhered for the purpose of determining what kind of rock it is?
A. I did not.
1000 Q. Do you know what kind of rock it is?
A. I am not positive.
Q. Do you know whether it is lime or ledge matter?
A. I think it is ledge matter.
Q. I ask you if you know. Do you know?
A. I think it was ledge matter.
Q. I ask you if you know. You know the difference between knowing and thinking?
A. Ledge matter.
Q. You are positive it is ledge matter?
A. I think it is.
Q. I ask you if you know it is ledge matter.

A. I could not swear positively whether it is ledge matter or not.
Q. Do you know whether that is ledge matter?
A. I am satisfied it is ledge matter.

(Counsel for respondent objects to any further cross-questioning on this lime, as the witness has fully answered, and it is a useless repetition.)

Q. I ask you whether you know that rock to which the ore adhered as you have stated is vein matter, ledge matter, or lime.
A. Ledge matter.
Q. You know, then, that to be the fact?
A. I am satisfied it is.
Q. I ask you if you know that to be the fact.

(Objected to by respondent on the ground that the witness has repeatedly stated that it was ledge matter, and it is a useless repetition of questions, taking up time and adding to the cost of the proceedings.)

1001 A. Any person would call it ledge matter; I would call it ledge matter.
Q. I ask you if you know if it is lime or ledge matter?

Mr. MINER:

Q. If you don't know say so; if you do know say so.
A. I might be satisfied it is ledge matter and cannot prove it.

Mr. REDDY:

Q. I ask you about what you know.
A. I suppose it is ledge matter.
Q. I ask you again if you know if it is ledge matter or lime?
A. I suppose I am satisfied of it, that it is ledge matter, and cannot explain it.
Mr. MINER: Answer that question yes or no and then you can explain how you know it.
A. It is ledge matter.
Mr. REDDY: Are you as positive of that as you are of any other fact that you have testified to here?
A. I am satisfied I am right here.
Q. That is not an answer to my question. Read the question, Mr. Examiner.

(The examiner reads the question as follows: "Q. Are you as positive of that as you are of any other fact that you have testified to here?")

A. Yes, sir.
Q. How does that ore streak marked on the northeast side of the ore chamber stand—flush with the other rock on either side
1002 of it, or does it stand out from the side as represented in the model?
A. It runs up.

Q. I ask you if it stands out; whether it stands out, as do those sticks, from the side of the chamber?
A. No, sir.
Q. It is flush and smooth—even?
A. Yes, sir.
Q. Even with the rock on either side?
A. I believe it is.
Q. You have examined the rock on either side?
A. This appears to run in on the side.
Q. I ask you if you have examined the rock on either side.
A. Yes, sir.
Q. What are the rocks?
A. Lime, I think, mostly.
Q. On either side?
A. On the lower part I never examined it particularly; on the right-hand side I have and it is lime.
Q. Did you examine it clear down to the floor?
A. No; on the left-hand side I did not.
Q. On the northeast side of that chamber did you examine it way to the floor?
A. Yes, sir.
Q. Where did you find the rock on that side?
A. Near the floor.
Q. What was that—lime? You say you examined both sides and found lime on either side?
A. I did not examine the one on the left-hand side.
Q. I am asking you about the rock on either side of that ore streak as marked on the north side of that chamber. You said you examined both sides of that streak.
A. On the right-hand side it is lime.
Q. What on the other side?
1003 A. I did not examine that at all, because it was covered over with dirt on the floor.
Q. You said awhile ago you examined both sides.
A. I did above.
Q. Did not you say a few moments ago you examined the rock on both sides of that streak?
A. I do not recollect that I did.
Q. Did not you say you examined the rock on both sides of that vein and it was lime on both sides?
A. Not in the floor.
Q. I ask you about the ore streak that is represented in the model as on the northeast side of the chamber; that you had examined it on each side, and that it was lime on each side.
A. I do not recollect my telling you there was lime on the floor.
Q. I ask you whether you said so not over five minutes ago.
A. I do not recollect my saying I examined both sides of the ledge.
Q. Did you not say that the ore streak was flush with the rock on either side; that it did not stand out from the rock?
A. Yes, sir.
Q. Did you not say it was lime on both sides?

A. No; I do not think I did.

Q. Do you know what kind of rock is on the lower side of that ore streak?

1004 A. I could not say whether it was granite or what it is. I could not say whether it is country rock on the left-han l side; it is covered up so.

Q. I ask you about the lower side of the ore streak.

A. That is the lower side.

Q. You would have to stretch yourself along the wall to make it the left-hand side down?

A. A man could stand up and do it.

Q. You spoke of the dip of that streak, did you not, in your testimony yesterday?

A. Yes, sir.

Q. What did you say the dip was?

A. I said it dipped to the north, I thought.

Q. Did not you testify yesterday that it pitched east from the ore chamber?

A. I could hardly tell whether north or south or east.

Q. I am asking what you said. I do not know whether you can tell anything. I am asking what you said yesterday.

A. Yes; it pitched east; that is a fact.

Q. Did you not so state yesterday?

A. Yes, sir.

Q. How do you ascertain the pitch or dip of a ledge?

A. By the way it runs. This was broken off. I supposed it dipped to the east by the way it stood. It dipped to the east as far as I could see it.

Q. How far could you see it?

A. Six or eight feet in the face of it in the chamber.

Q. Did you know whether that rock was encased by other rock or whether it stood as a slab or blanket up against the wall?

A. I could not say as to that.

1005 Q. You could not say that it really had any pitch?

A. I think it did, by the way I could see it in the face of it.

Q. Can you tell the pitch or dip of a ledge, unless you can have a certain length explored along the pitch of it?

A. All I could tell is what I could see in sight.

Q. For instance, if you should see a black pencil mark on a white wall you could not tell positively what dip that would be if it was extended in?

A. No, sir.

Q. So with the streak of ore or patch of ore adhering to a lime wall you could not tell what dip that would have if it extended in, could you?

A. No, sir.

Q. Without exploration?

A. No, sir.

Q. That was the case in this ore chamber. You found a certain quantity of ore lying up against a wall; whether it entered or not you could not tell?

A. I could not see how far it went.

Q. It might have been, as you have already clearly stated, like a blanket hanging against that wall; ore adhering to that wall?

A. I could not say as to that.

Q. You know nothing at all about the pitch, whether it had any pitch or extended into the rock?

A. I could not tell. I could not look into the rock. I could tell by the outside.

Q. It was a mere matter of guess whether it went in or had any pitch, and not a fact known to you?

A. It was not a fact known to me.

Q. Have you had any experience in ascertaining the dip or
1006 pitch of a ledge by measurement or by any certain means of ascertaining?

A. No, sir.

Q. You are not a surveyor?

A. No, sir.

Q. Never have been called upon to determine the dip or pitch of a ledge?

A. No; not that I know of. I have been with Alexander when he was surveying.

Q. Did he ascertain the pitch while you were with him?

A. He did not, with me.

Q. He did not show you how to ascertain the pitch?

A. No, sir.

Q. From the upper edge of the ore streak on the northeast side of the ore chamber to the roof what character of rock did you observe?

A. It was about the same character as before.

Q. Lime? From the upper edge of the ore streak to the roof what rock was there?

A. I think lime.

Q. Could you see any spots or patches of ore in that lime face?

A. No, sir.

Q. Had there been any work done on that face that you observed—drilling or picking?

A. The face of the chamber had been all dug out.

Q. Could you not see that the ore had all been taken out, or some other kind of vein matter taken down off that lime face, above the ore streak?

A. That it had been taken off?

Q. Yes, sir.

A. I did not notice that.

Q. Could you not see some spots or patches of vein matter or ore adhering to that lime face?

1007 A. That I did not notice particularly.

Q. If you were desirous of ascertaining whether this ore that you have described here on the northeast side of the chamber went into that wall or was simply a blanket on it would you not examine that lime face above to see if ore had not adhered to that, just as this piece was adhering below?

A. I did not notice that in particular.

Q. Why did you not, if you wanted to find out whether that ore there was a blanket or a streak entering into the country rock or extending out into the chamber; you did not want to find that out, did you?

A. That streak of ore runs up to the 39-foot level.

Q. Lengthways? Why did you not examine that face to see if ore had been attached to that lime face and taken off? Why did you not examine that?

A. I probably did not think of it.

Q. If you had found ore had been taken down from that face and at one time adhered to it, it would go a long way to convince you whether the ore remained adhered in the same way to that place or whether it extended in?

A. Yes; I suppose it would.

Q. Why did you not take the means at hand to determine whether that was a vein of ore going into the country rock or whether it was simply ore adhering to a lime wall?

A. I never paid any attention to that.

Q. You did not want to find it out?

1008 A. I would be willing to find it out if there was anything of the kind in it.

Q. Were you requested or directed by Silva or any of the parties to examine with a view to ascertaining that fact?

A. No, sir.

Q. That or any other place in the chamber?

A. No, sir.

(Recess to two o'clock p. m.)

1009 *Afternoon Session.*

CHARLES ANTHONY recalled for re-examination.

Mr. MINER:

Q. Are you acquainted with Mr. Thomas Boland, of Keeler, Inyo county, California?

(Objected to by complainant as not being re-examination.)

A. Yes, sir.

Q. Did you receive any communication from Mr. Boland in regard to this Stirling mine which you testified to previous to the sale of the mine by Silva to the complainant in this action? If so, state what the communication was.

(Objected to by complainant as not being in re-examination, immaterial, irrelevant, and incompetent, and calls for hearsay.)

A. I did. All I know about it was what Mr. Boland told me.

(Counsel for complainant moves to strike out the answer of the witness on the ground of it being hearsay.)

Q. State what Mr. Boland told you, and when and where.

(Same objection by complainant.)

A. Mr. Boland told me that Mr. Yerington had left word with him to send word over to Darwin to Frank Silva that he would give ten thousand dollars for the mine; that he had never seen the mine himself, but he had had experts to look at it and he was willing to give ten thousand dollars and that was a standing offer. Mr. Boland told me this.

(Counsel for complainant moves to strike out the answer
1010 of the witness on the ground that it is hearsay and incompetent.)

Q. At what place did Mr. Boland tell you that?

(Objected to by complainant on the same grounds as to the preceding question.)

A. In Mr. Boland's store, at Keeler.
Q. Please state the county and State.
A. Keeler, Inyo county, California.
Q. About what time was that?
A. I could not tell exactly what time; I think it was some time in November or December.
Q. What year?
A. 1883.
Q. Was it before Mr. Yerington and Mr. Forman visited the Stirling mine, about the middle of January, 1884; was it previous to that visit?

(Objected to by complainant on the ground that it is immaterial, irrelevant, and incompetent, and is founded entirely on hearsay.)

A. Before.
Q. Do you remember the circumstance of Mr. Yerington and Mr. Forman visiting the Stirling mine in 1884, in company?
A. I recollect of their being there, at Darwin.
Q. On their way to the Stirling mine?
A. Yes, sir; on their way to the Stirling mine.
Q. Was this conversation between you and Mr. Boland prior to that time?

(Same objection by complainant.)

A. Yes, sir.

Q. Are you positive that it was prior to the time when Mr.
1011 Yerington and Mr. Forman came down there to visit that mine?

A. Yes, sir.
Q. Did you communicate to Frank Silva, the defendant in this action, the message which you have stated Mr. Boland gave you in regard to the offer of Mr. Yerington for this mine?

(Same objection by complainant.)

A. I did.

Q. Previous to the time when Mr. Yerington and Mr. Forman visited the mine?

A. Yes, sir.

Q. What was Mr. Silva's reply to that message?

(Objected to by complainant as incompetent, irrelevant, and immaterial.

A. He said he would not take it.

Q. Would not take what?

A. The ten thousand dollars?

Q. He refused it?

A. Yes, sir.

Q. Now, you have said something in answer to counsel in regard to the amount of money that Silva owed you at the time he sold this mine. About how much did Silva owe your firm or you at that time?

A. I guess between $150.00 and $160.00.

Q. Immediately after the sale of the mine did he not pay you something?

A. He paid me a portion of it.

Q. How much?

A. I am not positive what amount he did pay. He intended to pay one-half.

(Counsel for complainant moves to strike out the answer as not being responsive to the question.)

Q. State what he paid.

A. I could not testify positively what amount he did pay.

1012 Mr. White attended to the books at that time.

Q. He made a payment?

A. Yes, sir.

Q. Did he not pay you at least eighty dollars?

(Objected to by complainant as leading.)

A. I could not say.

Q. Then you do not know but what he paid the whole bill, as far as your knowledge is concerned?

(Same objection by complainant.)

A. He did not pay the whole bill; he paid some.

Q. Whatever he paid, was it not satisfactory to you at the time?

(Objected to by complainant as immaterial, irrelevant, and leading.)

A. Yes; it was at the time.

Q. Has he not dealt with you since?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. Yes, sir.

Q. Is his credit not good with you at the present time?

(Objected to by complainant as irrelevant, immaterial, and leading.)

A. Yes, sir.

Q. Do you know why he could not pay all his bills in full at the time he sold this mine?

(Objected as immaterial, irrelevant, and not re-examination.)

A. I could not say as to that. He told me just as soon——

1013 (Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question; also it is hearsay.)

Q. Did you have any talk with Mr. Silva about your bill immediately after he sold this mine?

A. No.

Q. Did you have any conversation with him about the amount he owed you at any time after the sale of this mine?

A. I do not think I did. I believe not.

Q. When you stated, in answer to counsel's question, that you somewhat questioned his fairness and honesty in the matter of your bill what did you mean by that; if you never presented a bill and never asked him to pay you why did you question his honesty?

(Objected to as leading, argumentative, suggestive, immaterial, and irrelevant.)

A. I just thought he had not done what was fair and right on account of not paying all the money. He made an excuse——

(Counsel for complainant objects to the witness stating what Silva said to him.)

A. (Continuing:) That as soon as he got some money from Carson he would pay the balance. I told him it was all right.

(Counsel for complainant moves to strike out the answer of the witness on the ground that it is irrelevant and immaterial and self-serving statement of Silva.)

Q. Did he not tell you he had not brought enough money down with him to pay all he owed?

1014 (Objected to by counsel for complainant on the ground of its calling for the statement of the defendant in his own favor, is not in re-examination, is immaterial, irrelevant, leading, and suggestive.)

A. He did.

Q. Did you not afterwards know that the Southern Development Company of Nevada had stopped the payment of his certificate of deposit and prevented him from paying any more of the money he had on deposit at Wells-Fargo's in any way?

(Objected to by complainant as immaterial, irrelevant, incompetent, not in re-examination, leading, and suggestive.)

A. Not at that time.

Q. Subsequently, immediately after that time, did you not hear that?

(Same objection by complainant.)

A. Yes, sir.

Q. After you heard the full circumstances and the reason why Silva was prevented from using the money he had obtained for the sale of that mine, namely, the seventy-five hundred dollars balance, did you in any way blame him for not paying his bills when you understood the circumstance of this money being tied up so that he could not get hold of it?

(Objected to by complainant as leading, pleading with the witness, argumentative, immaterial, and incompetent to prove any issue in the case.)

A. Not at that time.

Q. Does Silva owe you anything at the present time?

1015 A. Yes, sir.

Q. Does it amount to very much?

(Objected to as immaterial, irrelevant, and not in re-examination.)

A. I do not know what you would call much.

Q. How much is it?

A. Probably about one hundred and fifty or one hundred and seventy-five dollars.

Q. Is his credit good with you at the present time?

(Same objection by complainant.)

A. It is.

Q. Then the fact that he did not pay your bill in full has not injured his credit with you at the present time?

(Same objection by complainant.)

A. I do not know that it has.

Q. You understand the reason. You have heard why he is not able to pay his debts. Do you understand why he is not able to pay his debts?

(Objected to by complainant as leading, suggestive, immaterial, and not in re-examination.)

A. Yes, sir.

Q. You are his friend, are you not?

A. Certainly.

Q. You are not ashamed of being Frank Silva's friend, are you?

(Objected to on the ground that the answer would be incompetent to prove anything not having the status of the witness.)

A. I am not.

Q. Would the fact that you are his friend cause you to swear

1016 to something that is not true in this case because you thought it might help him?

(Objected to by complainant on the ground that it is irrelevant and immaterial.)

A. I would not.

Q. You spoke about speaking to Mr. Reddy, the counsel on the other side, during some ride from Darwin to some mine in Darwin, and that you reflected somewhat on Mr. Silva's fairness in not paying his bills. Was that before you found out the full circumstances of this case between him and the Southern Development Company of Nevada?

A. I rather think it was.

Q. At what time was that; when was it?

A. I could not tell the date. If I was at home I could tell the exact date.

Q. Was it after the criminal trial or before?

A. After.

Q. After the criminal trial?

A. Yes; I believe it was after.

Q. Did you know at that time that they had brought two or three suits against him to stop the payment of this money, enjoining its payment in Carson, and that he was utterly without any means at all?

(Objected to by complainant on the ground that is it immaterial, irrelevant, leading, and assumes the fact that Silva was without any means at all.)

A. I do not know exactly how the affair stood at all.

Q. Has Silva been working down near Darwin ever since this criminal trial took place up to the present time?

1017 (Objected to by complainant as immaterial and irrelevant.)

A. Yes; at different times. He has not worked there steady.

Q. Has he not most of the time been working in a mine there from the time of that criminal trial up to the present time?

(Objected to by complainant as immaterial and irrelevant.)

A. Yes; I believe he has; most of the time he has worked; there was a great deal of time that he did not do any work.

Q. You stated in answer to a question by Mr. Reddy that you might have said something about changing your opinion of Mr. Silva, for the reason that he had not paid you in full. I would like you to explain what you meant by your having changed your opinion of Mr. Silva, if you said anything of that kind.

(Objected to as immaterial and irrelevant.)

A. I said I did not think he had done just exactly right in not paying.

Q. Was that before you had understood the circumstances of these cases against him and before you knew his reasons for not having paid you?

(Objected to by complainant as immaterial and irrelevant.)

A. That I am not positive of; I could not say.

Q. At the present time do you entertain an opinion of that kind against him; do you think at the present time that he acted unfairly or dishonestly in not paying you the full amount of your claim?

(Objected to by complainant as irrelevant and immaterial. The opinion of the witness in that respect is unimportant in every particular.)

1018

A. I do not think he acted in any way dishonestly about it.

Q. You understood the reasons why he did not?

(Objected to as leading, immaterial, and irrelevant.)

A. I presume I did.

Q. When you visited the mine in June, 1886, do you remember seeing a little excavation in the ore chamber known as a little shaft sunk in the south end of the chamber?

(Objected to by complainant as not being re-examination.)

A. I did.

Q. You stated something about Mr. Eddy examining that little shaft sunk in the chamber. Please state how Mr. Eddy examined it, if you know.

A. All that I see him do was to take a pick and knock off a little ore, and he showed it to me.

Q. Out of the bottom of the shaft?

A. Out of the bottom or the side.

Q. He was engaged in examining that little shaft, was he not?

(Objected to by complainant as leading.)

A. Yes, sir.

Q. State how far you can trace the ore, commencing at the little shaft in the ore chamber on the northeast side of the little shaft; commencing at that point, tell me to what distance you could trace a continuous body of ore.

(Objected to on the ground that the question is leading and not in re-examination.)

A. I could not tell the exact distance.

Q. Commencing on that point, to what place could you trace that ore, going around or up—commencing, now, at that point (pointing to the model)?

1019

A. It could be traced up to the 39-foot level and running back in the 39-foot level.

Q. About how far back?

A. I should judge about 28 feet.

Q. And how far up in the 39-foot level?

A. There was a raise.

Q. State how far up could you trace it up above in the 39-foot level up in the roof.

A. Up to the top.

Q. About how far from the 39-foot level—how far above the bottom of the level—could you trace that ore up—up into the roof and above the roof?

A. I do not know what the height of the roof is.

Q. About?

A. The roof may be 8 or 9 feet.

Q. Did you not state there was an upraise in that?

A. Yes.

Q. How far up?

A. About 15 feet in that upraise.

Q. Above the bottom of the 39-foot level?

A. Yes; there was an upraise of about 15 feet at the top of that raise. I could not see whether there was ore up there or not, because I did not look.

Q. Did you take a candle and look?

(Objected to by complainant as leading.)

A. I believe I did. I took my candle and raised it up with my hand.

Q. How many of you were standing there at the time you were looking up in that raise?

1020 A. Three or four.

Q. Did each of you have a candle?

A. I think we did.

Q. Did the light of the candle reflect up in that raise?

(Objected to by complainant as leading.)

A. Yes, sir.

Q. Did you not look up there for the purpose of seeing whether there was ore up there or whether there was not ore up there?

(Objected to by complainant as leading.)

A. I did.

Q. What conclusion did you come to?

(Counsel for the complainant objects to the witness' conclusion. It is a question of fact.)

A. I could not tell whether there was ore there or not.

Q. Give us your opinion.

(Counsel for complainant objects to calling for the opinion of the witness. The witness says he does not know whether there was ore there or not; also incompetent.)

A. I was not close enough to see. I could not judge whether there was any ore there or not.

Q. Did you form an opinion as a mining man and as a man having any knowledge of ores at all whether or not the ore body extends up into that upraise?

(Counsel for complainant objects to the question as calling for the opinion of the witness, and as incompetent, immaterial, irrelevant, leading, and suggestive.)

A. I could not say whether there was any ore there or not.

Q. Do you know what I asked you?

1021 A. You asked me whether we looked up there to see whether there was any ore there.

Q. No; I asked you, did you have any opinion on the matter after looking up there?

A. I could not tell whether there was any ore there at all; I was not close enough to see it and formed no opinion.

Q. From having traced this ore, as you stated, from this little shaft in the ore chamber up and into the 39-foot level did you not have knowledge enough of that ore vein and did you not see enough of its surface to judge and form some opinion of its dip and pitch?

(Objected to by complainant as not being re-examination, and, secondly, the opinion of this witness is not competent evidence. He has not shown sufficient knowledge of the matter to make his opinion admissible, and that it is not a proper subject on which to take the opinion of the witness.)

A. Yes, sir.

Q. You saw enough of it, then?

(Objected to by complainant as urging the witness and suggesting.)

A. Yes, sir.

Q. You saw enough of it to form an opinion as to its pitch, did you?

(Same objection by complainant.)

A. Yes, sir.

Q. If the point I am pointing at on the model represents

1022 north (pointing to the letter "N" on the line marked "True north," at the bottom of the model) and the line at the bottom of the model represents "true north," what, in your opinion, would be the dip and pitch of this body of ore which you have described as running from the little shaft in the bottom of the ore chamber up the northeast side of the ore chamber and up into the 39-foot level, what would be its dip or pitch, as it appeared to you, according to the points of the compass designated?

(Objected to by complainant, as it assumes the existence of a body of ore; that it is leading and suggestive; that the witness has not been shown to be competent to form an opinion on such a question, and the witness himself has already stated on cross-examination that he had not sufficient facts and could not tell what the dip was from what he could see.)

A. I should judge it dipped about east.

Q. Did that ore body last mentioned extending from the chamber up into that level present an appearance to you of patches or blotches or separate pieces of ore merely plastered on a lime surface, or did it present to you the appearance of a solid, continuous body

of ore, the extent and depth of which you had no means of determining, and which appeared to extend indefinitely in an easterly direction?

(Objected to by complainant as leading and assumes the existence of a body of ore; that the witness is incompetent to give an opinion, and that the facts known to the witness were insufficient to enable any one to state what the pitch was or whether it had any pitch.)

A. I could not tell positively about it.

1023 Q. Please read the question, Mr. Examiner.

(The examiner reads the question.)

A. It appeared to be a body of ore.

Q. Extending indefinitely; did it appear to be a body of ore extending indefinitely?

(Objected to by complainant as urging the witness and leading.)

A. Yes, sir.

Q. In this examination are you laboring under the impression that you must answer all these questions about this mine and ore and ore body positively, as absolute facts, or merely that you are to give your opinion and judgment as a mining man upon them?

(Objected to by complainant as immaterial, irrelevant, leading, and the opinion of the witness on that question is unimportant.)

A. I do not suppose I am, positively.

Q. In regard to this matter, do you state that positively from what you actually saw, namely, that you saw certain deposits in this mine of a character similar to the sample which you have offered here in evidence marked "Exhibit M;" that you measured those deposits, be they ore or not, and they measured so much; as to these facts do you state them positively, or do you state them as matters of opinion?

(Objected to by complainant on the ground that it is irrelevant and leading, and that it is treating the witness as though he was an infant and incompetent to give testimony.)

1024 A. We measured them; I am positive of that.

Q. You state those facts positively, then?

(Objected to by complainant as leading.)

A. Yes, sir.

Q. As I understand you, then, you found a deposit in the mine of the kind and character of the sample, Exhibit "M," and measured those bodies and they measured what you have stated here in evidence?

(Objected to by complainant on the ground that it is not re-examination, but is repetition and misleading.)

A. The ledge was of the width that I got that out.

Q. Were you directed by any person, either the defendant Silva or any other person, in making your examination in this mine?

A. There might have been some talk of my going into the mine and sampling it.

Q. Were you asked to testify in any particular way in this case by any person?

(Objected to by the complainant as not being re-examination, no such matter as that having been put to the witness in cross-examination.)

A. I was not.

Q. Did Frank Silva or any other person ask you to write down anything on this memorandum which has been offered here in evidence marked "N" and "O?"

A. No.

Q. Were these memorandums "N" and "O" ever shown to Frank Silva or his counsel before you testified in this court-room?

A. No.

1025 Recross-examination:

By Mr. REDDY:

Q. You say Thomas Boland gave you a certain message to carry to Mr. Silva?

A. Yes, sir.

Q. You are sure that was before Mr. Yerington and Mr. Forman had visited the mine?

A. Yes, sir.

Q. What makes you sure of the fact?

A. I never saw them at Darwin before.

Q. Mr. Boland, you say, told you to tell Frank Silva that he would give him ten thousand dollars for the mine, and that was a standing offer?

A. That is what Mr. Boland told me.

Q. And that he, Yerington, said he would give that money without having seen the mine; that he had heard of it and had experts there?

A. Yes, sir.

Q. You remember each word that was communicated to you by Boland?

A. Something to that effect.

Q. I ask you, do you remember the words?

A. Yes; that is what he told me.

Q. You remember the exact words he communicated to you on that occasion, do you?

A. Yes, sir.

Q. And you communicated those exact words to Silva, did you?

A. Not the whole of them; I just repeated to him that Mr. Yerington left word with Boland that he would give ten thousand dollars for the mine.

Q. You remember the exact words at that time that Boland had communicated to you?

A. Yes, sir.

Q. You did not communicate them exactly as they were given to you?

A. I do not know that I did.

1026 Q. You now recollect the exact words communicated by Boland?

A. I did not communicate the whole words.

Q. You remember them?

A. Yes, sir.

Q. Where did Mr. Boland communicate those words to you?

A. In the store.

Q. Whose store?

A. Mr. Boland's.

Q. Who was present?

A. I do not think any one was present at the time.

Q. What time in the day was it?

A. I think it was some time in the afternoon.

Q. Do not you know?

A. I could not tell exactly.

Q. You do not know if it was in the forenoon or afternoon?

A. I think it was in the afternoon.

Q. Did you leave for Darwin that day?

A. No.

Q. When did you go after that?

A. I went the next morning.

Q. How were you there—with a buckboard and horses or mules?

A. Yes, sir.

Q. How long was it after that that you saw Silva?

A. I think it was not until the next day.

Q. How long is it since that communication was made to you by Boland? How long ago?

A. I could not tell the exact time.

Q. About what time; what month was it in?

A. I could not tell positively what month.

Q. Why not?

A. I cannot tell exactly the day or night; I did not pay attention enough at the time.

Q. Do you know whether it was October or December, 1884?

1027 A. It was some time in October or November or December, 1883.

Q. It was in October or November or December; in some one of those three months?

A. I think so.

Q. May it not have been in January?

A. No.

Q. It may have been the 31st of December, may it not?

A. I could not tell you what time it might have been.

Q. Will you swear positively that it could not have been on the 1st of January, 1884?

(Objected to by respondent as immaterial, irrelevant, and incompetent. The witness has positively testified he cannot recollect the

exact time. Not being able to tell the exact time he cannot answer but what it might be any day in the year. The witness says positively it was previous to the visit of Mr. Yerington and Mr. Forman to the mine.)

Q. Having said it may have been on the 31st of December, 1883——

A. It might have been.

Q. Will you now swear it could not have been on the 1st of January, 1884?

A. I would not.

Q. Will you swear that it may not have happened as late as the 4th or 5th of January, 1884?

A. I could not swear to any day, because I do not recollect exactly.

Q. It may have run on pretty well into January, for aught that you remember?

A. It might possibly.

Q. It might possibly have been as late as the 10th or the 15th of January—between those dates?

A. It might.

Q. Then you are not willing to swear positively it was be-
1028 fore Mr. Yerington and Mr. Forman visited the mine? You say your recollection is that way?

A. I am satisfied it was.

Q. Will you swear positively?

A. It was before I knew of Mr. Yerington ever to come through Darwin to go to the mine. If he went to the mine he must have gone some other way.

Q. You saw Mr. Yerington and Mr. Forman at Darwin together at a time when they were said to have visited the mine with a view of purchasing it?

A. Yes, sir.

Q. When Silva went with them to view it?

A. Yes, sir.

Q. Do you know what month that was in?

A. I will not be positive. I think it was in February or March. What the date was I could not tell.

Q. Some months before you had communicated this message to Mr. Silva?

A. I think so.

Q. Did you communicate Mr. Silva's answer to Mr. Boland or any one else?

A. I do not know that I did. The talk might have been afterwards about the mine.

Q. After what?

A. After I talked to Frank. I might have talked something to Boland about it, but I do not recollect the conversatien which occurred after that positively.

Q. Your impression is that this communication may have been as early as October, 1883?

A. I do not think it was as early as that. It might have been, too.

Q. At all events it was several months before Mr. Yerington went to visit the mine?

A. It was some time before.

Q. You were a witness in the case of The People *versus*
1029 Frank Silva, were you not, tried here in this court, wherein this same question was involved?

A. The last trial; yes.

Q. Did you testify to any matter of this kind on that occasion?

A. I believe that was talked of.

Q. I ask you now if you gave this testimony on the other trial?

(Objected to by respondent on the ground that the evidence on that trial was taken down by a short-hand reporter now present in this room, and before the witness can be questioned in regard to his evidence then given the writing should be shown to him and he be questioned in regard to it; and if his evidence as then written down is different from the evidence that he now gives that he be shown that evidence and be allowed an opportunity to explain it. Counsel for respondent now asks that the evidence as written down be produced, if the same was written out in long hand by the said reporter, in order that the same may be shown to the witness and he be asked whether he made such a statement. Counsel for the complainant states that the short-hand notes were never written up officially.)

A. I think it was spoken of.

Q. I ask you if you gave this testimony at the other trial; do you or not understand it?

A. I am not positive.

Q. Do you know whether you gave this testimony or not?

A. I do not know whether I did or not.

Q. Do not you know you did not give this testimony?
1030 A. No; I do not know whether I did or not.

Q. But you remember very distinctly the exact words of Boland when he communicated Mr. Yerington's message to you, do you?

A. I recollect him, but I do not know at what time it was. He was very particular in telling me to tell Frank.

Q. Was John Alexander with you when you looked up in the raise from the 39-foot level?

A. I think he was standing close by.

Q. How high did you say it run from the floor of the 39-foot level?

A. I should say about 15 feet.

Q. Not from the roof?

A. Up to the raise.

Q. You measured from the floor and not from the roof?

A. Yes, sir.

Q. How high was the drift or roof of that level from the floor?

A. It might have been seven or eight feet; I do not know exactly.

Q. What do you mean by a body of ore?

A. A ledge or streak or body of ore.

Q. What do you mean by a body of ore?
A. A body of ore was running through there.
Q. How large must it be to constitute a body; does it make any difference in the size, so long as there is ore?
A. I do not know it does.
Q. Small or large, little or big, it is a body of ore, if there is any ore there?
A. I suppose so.
Q. You say you got these samples from the ledge in the ore chamber?
A. Yes, sir.
1031 Q. You measured that streak and say it was about three feet wide in place?
A. Yes, sir.
Q. That was the whole size of the ledge, was it?
A. It varied.
Q. You measured the ledge. When you say it is three feet wide in a place you mean the entire place?
A. Yes, sir.
Q. And when you speak about ore you mean ore described as you have described it here on the cross-examination?
A. Yes, sir.
Q. Mixed with other vein rock?
A. Yes, sir.
Q. Where you measured that ledge and it was three feet wide you do not know what proportion of ore was in it, but simply know it was vein rock?
A. Yes, sir.
Q. You say the ledge dipped east from the ore chamber, in your opinion?
A. I could not tell.
Q. You do not know whether it dipped or not?
A. I think it did.
Q. Do you know?
A. Yes; from what I saw of it.
Q. What do you mean by looking at the upper edge?
A. I could tell by the face of the chamber.
Q. Then it was the shape of the thing in the chamber that gave you the idea of the pitch?
A. Yes, sir.
Q. You do not know how thick it was?
A. I could not tell.
Q. It might have been six inches thick or two inches?
A. I could not swear to that.
Q. It might have been a mere scale or slab attached to another kind of rock?
A. I could not say.
1031½ Q. You have stated in re-examination to counsel that there was no understanding or agreement as to what any of you should swear to?
A. No.

Q. Was there no agreement between you?
A. No.
Q. Who measured the ledge that you have been speaking about in the chamber?
A. We were there.
Q. Who measured it?
A. We just estimated it.
Q. Then you all agreed it was just so wide?
A. We supposed it was so wide.
Q. And you all agreed to that?
A. Yes, sir.
Q. There was no actual measurement?
A. Not at that time.
Q. At any time when you were there?
A. Not this last time.
Q. At any time when you saw it?
A. The last time I was there?
Q. Yes.
A. No.
Q. Then you all agreed that that measurement was correct, did you?
A. It was that much, any way.
Q. And you all agreed and said that must be so wide?
A. We estimated it at so much.
Q. And agreed on that estimate—all of you?
A. Yes, sir.
Q. And all of you agreed on that estimate?
A. Yes, sir.
Q. You knew, and you formed an estimate, that you were all to be witnesses?
A. I suppose so.
Q. And you knew you would all swear to the same thickness, having estimated it alike?
A. I did not know whether they would.
1032 Q. You expected them to?
A. I made no calculation.
Q. I ask you if you did not expect those men to swear to the ledge being of the width agreed upon there in the chamber?
A. I do not know.
Q. I ask you if you expected them to swear to the ledge being the width that you estimated it to be?
A. No; I did not.
Q. But you all agreed to it and knew all were going to be witnesses and all were going to be sworn on that question?
A. I did not know what they were going to do.
Q. Did you not say you knew they were going to be witnesses?
A. Yes, sir.
Q. You expected them to swear on that very point?
A. Yes, sir.
Q. You put that point down?
A. Yes; but I did know——

Q. You put that down in your book?
A. Yes, sir.
Q. Did they not do the same thing?
A. Yes, sir.
Q. How did you all come to enter that same estimate in your book if you did not expect all to swear to it?
A. I entered it because I wanted to know what the width of the ledge was.
Q. Did you know any better than you did before? It was simply agreed on; there was no measurement?
A. I did not know as I did that. It was considered that it was that ledge before.
Q. At what angle did that ledge dip, if you know?
1033 A. I could not tell you.
Q. Do you know what you are talking about when you are talking about the angle or dip of the ledge?
A. I could not tell you what angle.
Q. When you speak about the dip or angle of inclination what do you mean?
A. What degree it dips.
Q. From what?
A. From the chamber or where you can see it; which way it would dip down.
Q. What is your basis of calculation to ascertain the angle?
A. Just my own judgment.
Q. You understand that a dip is always the same as the course, do you?
A. As a general thing.

Re-examination by Mr. MINER:

Q. I will ask you if there was not a tape measure in the possession of some one of you at the time of your last visit to the Stirling mine?

(Objected to by complainant as not being in re-examination and leading and suggestive.)

A. There might have been, but I do not recollect using it.
Q. Do you pretend to say that no one of your party used a tape measure in measuring these ore deposits or body in this mine?

(Objected to by complainant as leading.)

A. I could not say.
1034 I wish to change my answer on page — to the question "Did he not state that Silva had acted unfairly and dishonestly with him in not paying him?" so as to read "I believe he did say unfairly;" also, on page —, I wish to change the answer to the question, "You all came to the same conclusion and all agreed to swear to the same thing?" from "Yes, sir" to "No, sir;" and the answer to the next question, "You all agreed you would swear to the same things?" from "Yes, sir" to "No, sir."

(Signed) CHAS. ANTHONY.

1035 JOHN C. IRWIN, a witness called for the respondent, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.
A. My name is John C. Irwin; residence, Independence, Inyo county; occupation, assessor of Inyo county.
Q. How long have you resided in Inyo county, California?
A. I came here in 1872, nearly fourteen years ago.
Q. Have you resided here since 1872?
A. Yes, sir.
Q. Are you acquainted with the respondent in this action—Frank Silva?
A. I am.
Q. How long have you known him?
A. Since the spring of 1873.
Q. Where did you become acquainted with him in 1873?
A. In Cerro Gordo.
Q. In this county?
A. Yes, sir.
Q. How long did you know him in Cerro Gordo?
A. I have been intimately acquainted with him ever since.
Q. How long at that place, Cerro Gordo, did you know him?
A. In the neighborhood of two years.
Q. Are you acquainted with Silva's general reputation in Cerro Gordo during those two years for truth, honor, and integrity?

(Objected to by complainant on the ground that it is immaterial, irrelevant, incompetent, and the time when he knew the reputation of the respondent is too remote.)

A. Good, as far as I know.

1036 (Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. Are you acquainted with what Frank Silva's general reputation was at Cerro Gordo, Inyo county, during the two years that you say you knew him there, for truth, honesty, and integrity?

(Objected to by complainant as irrelevant, immaterial, and incompetent, and that the time is too remote.)

A. I am.
Q. What was that reputation?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. It was good.
Q. Since those two years that you knew him in Cerro Gordo up to the seventh day of May, 1884, are you acquainted with his general reputation for truth, honesty, and integrity in the community in which he has resided during said time?

(Objected to by complainant on the ground that it is immaterial, irrelevant, incompetent, and that the inquiry is not limited to the time prior to the commission of the acts complained of.)

A. I am.

Q. What was that general reputation?

A. It was good, as far as I know.

Q. Since you have known Frank Silva in Cerro Gordo since those two years, at what place has Silva resided up to the time that he sold the Stirling mine?

(Objected to as irrelevant, immaterial, and incompetent.)

A. I believe he always made Darwin his home.

1037 (Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. You do not understand the question. Read the question, Mr. Examiner.

(The examiner read the question as follows:)

"Q. Since you have known Frank Silva in Cerro Gordo, since those two years, at what place has Silva resided up to the time that he sold the Stirling mine?"

A. In Darwin.

Q. Inyo county?

A. Yes, sir.

Q. Have you been to Darwin often since you knew Silva in Cerro Gordo up to the 15th day of February, 1884?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. Not more than once or twice a year.

Q. Do you know what the general reputation of Frank Silva for truth, honesty, and integrity was in Darwin during said time?

(Objected to by complainant on the same ground as the preceding question, and on the further ground that the proper predicate is not raised for proving his reputation at Darwin.)

A. It was good, as far as I know.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. Did you know what it was?

A. Yes, sir; good, as far as I know.

1038 (Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. Are you acquainted with what Frank Silva's general reputation was in the town of Darwin and in the community of Darwin, preceding February, 1884, for truth, honesty, and integrity?

(Objected to by complainant on the ground that it is immaterial, irrelevant, and incompetent.)

A. I am.

(Counsel for complainant moves to strike out the answer as not responsive, on the ground that the answer is what he knows at the present time, and does not answer whether he knew what it was at that time.)

Q. What was that reputation?
A. It was good.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. How long have you been county assessor of this county?
A. Five years.
Q. Have you assessed the Stirling mine, being the mine mentioned in the pleadings in this action, during the years 1884–'5?

(Objected to as irrelevant, immaterial, and incompetent.)

A. I did.
Q. To whom did you assess it?

(Same objection by complainant.)

A. The Southern Development Company.
Q. The complainant in this action?
A. I believe so.

Q. Will you be kind enough to produce the assessment
1039 books for the years 1884–'5?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. There they are (producing).
Q. What book is this?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. The assessment book of 1884.
Q. Of the property of Inyo county, California?
A. Yes.
Q. It is generally called the assessment roll?
A. Yes.
Q. Turn to page 119 and see if the assessment of this Stirling mine, being the Stirling mine mentioned in the pleadings, is assessed by record of the assessment set forth in this book?

(Objected to on the ground that it is irrelevent in every particular and incompetent.)

A. It is assessed on page 119.
Q. Did you see this property?

(Same objection by complainant.)

A. I did not.
Q. This record here, on page 119, in regard to the assessment of this mine, is the record of the assessment made by you as assessor of this county on that property?

(Objected to by the complainant on the ground that it calls for secondary evidence and the record itself is the best evidence.)

A. It is.

Q. Have you ever been out to that Stirling mine?

A. No.

1040 Q. Do you know whether this is the same Stirling mine that was sold by Frank Silva to the Southern Development Company of Nevada?

(Objected to by complainant as incompetent, irrelevant, and immaterial.)

A. It is.

Mr. MINER: I now offer in evidence the portion of the record of the said assessment roll, being the portion on page 119, as follows:

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

Mr. MINER: I will read the entry.

(Reading:)

"Southern Development Company: Road district, 6; school district, Darwin; description of property, 1,500 feet in the Stirling mine, situated in Coso mining district; mining and blacksmiths' tools, 150; value of real estate, 1,000; value of improvements thereon 500; value of personal property, exclusive of money, 150; total value of property after reductions, 1,650; total tax, $53.63."

1041 Q. Do you know whether the taxes were paid on the Stirling mine as assessed or any portion of the taxes?

(Objected to by complainant as irrelevant, immaterial, and incompetent, and that the assessor is not the proper officer to receive taxes on real estate.)

A. I could not tell you whether they are paid or not; the tax collector can tell you that.

Q. Do you know yourself whether they are paid?

A. Of course, I know.

Q. Have you assessed the property since 1884?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. I could not state positively whether it is assessed in 1885 or not.

Q. Have you any communication from the agent or from the Southern Development Company of Nevada in regard to the assessment of this property?

(Same objection by complainant.)

A. I have.

Q. Will you produce it?

A. I will (producing).

Q. I ask you if you know if you assessed this Stirling mine in the year 1885?

(Objected to by complainant as irrelevant, immaterial, and incompetent, and on the ground that the assessment roll or assessment list is the best evidence of the assessment, if it has been assessed.)

A. I am not sure without looking at the assessment book.

Q. Have you assessed said mine for the year 1886?

1042 (Same objection by complainant.)

A. No, sir; I have not.

Q. Do you intend to assess it this year?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. I do.

Q. I will ask you if you know the fact whether the taxes on the said Stirling mine were paid on the assessment of 1884, offered in evidence?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. It was not paid to my knowledge.

(Counsel for complainant moves to strike out the answer.)

Q. State why you know the taxes were not paid, if they were not, for that year, 1884.

(Objected as irrelevant, immaterial, and incompetent.)

A. By the list that the tax collector gives me every year of property sold to the State.

(Counsel for complainant moves to strike out the answer on the ground that the list is the best evidence of what was given to the witness by the tax collector and on the ground that it is incompetent, the fact whether it is paid or not not being a fact within his own knowledge, and that the answer shows that it is hearsay.)

Q. Have you that list showing that the taxes have not been paid on the property?

A. I might find it; it is over a year ago and I do not know whether I could or not.

1042½ Q. I would like you to get it.

A. I do not know where it is now.

Q. Have you a list for last year and this year?

A. It must be for last year.

Q. Have you had any experience in lead mines?

A. I have.

Q. Where?

A. In Utah and Cerro Gordo.

Q. Were you ever in Montana?

A. Yes, sir.

Q. Are there lead mines there?

A. No; lead mines only in Utah and Cerro Gordo.
Q. How long were you working in Utah in lead mines?
A. A little over a year.
Q. How long did you have any experience at Cerro Gordo in lead mines?
A. About two years.

(A recess is here taken to to-morrow, Saturday, June 20, at ten o'clock a. m.)

1043 SATURDAY, *June 19th*, 1886.

(Counsel and parties met pursuant to adjournment.)

JOHN C. IRWIN recalled for further examination:

MR. MINER:

Q. I will ask you to examine samples of ore marked "Exhibits G, H, I, J, K, L, and M," and state whether, in your opinion, they are ore, and what kind of ore.

(Objected to by complainant on the ground that it has not been shown the witness has the ability to determine the ore or its character or its value, and on the further ground that it is immaterial and irrelevant.)

A. In my judgment it is all ore.
Q. What kind of ore is this?
A. It is lead ore, I should call it; lead and iron.
Q. What class of lead and iron ore would you term this; what character of lead ore?
A. That would be very hard telling. I cannot tell what the character or value is until it is assayed. I have a judgment and opinion as to what it was, but it is nothing positive about it.
Q. Are there not different classes of ore known as galena?

(Objected to by complainant as leading.)

A. Oh, yes; there are different classes of galena and different classes of lead ore.
Q. In what class would you place this ore?
A. More of a porous lead ore; it is not like a solid galena.
Q. Is this silver-bearing rock or not?

1044 (Objected to by complainant as leading, and that the witness is not shown to be qualified to give an opinion on that question.)

A. It is.
Q. State, now, whether iron ore is or is not usually found in lead ores of this character.

(Objected to by complainant on the ground that it is not shown that the experience of the witness has been sufficient to warrant him in answering the question as to what is usually found in lead mines.)

A. There is iron ore found in all lead mines.
Q. What kind of work did you do in the mines in Utah?
A. Mining.
Q. Working with the drill and pick?
A. Yes, sir.
Q. And in Cerro Gordo?
A. With the drill and the pick, shovels and wheelbarrow.
Q. During the time that you were working in that way did you handle ores of this kind?
A. I did.
Q. And worked in them?
A. Yes, sir.

Cross-examination by Mr. REDDY:

Q. Did you ever reside in Darwin?
A. Only a short time.
Q. How long?
A. About two months.
Q. What time?
A. In 1875.
Q. Did you know Silva at that time there?
A. Yes, sir.
Q. What was he doing there?
A. Always prospecting ever since I have known him.
1045 Q. Did you ever hear Silva's reputation for truth, honesty, and integrity discussed while living at Cerro Gordo, or was there ever any discussion?
A. None that I know of.
Q. Did you ever hear of his name being mentioned in any such connection?
A. Not in that regard.
Q. What was he doing in Cerro Gordo?
A. Always prospecting. When he got out of money he went to work in mines. I worked in the mines with him.
Q. He was just an ordinary miner, a man who would attract no attention from any one except the man who might be beside him in the mine?
A. A common miner, the same as myself.
Q. You never heard anything about him in Cerro Gordo, bad or indifferent?
A. I never heard his character questioned at all.
Q. What you have said here is founded on your impression created by your association with him?
A. Yes; and never hearing anything to the contrary.
Q. You never heard anything about him, one way or the other?
A. No.
Q. What you have said is based on your own impressions?
A. My own experience.
Q. The same thing may be said of Darwin? You lived there about two months?

A. Darwin less than Cerro Gordo.
Q. In Darwin you lived about two months?
A. Yes, sir.
Q. In 1875?
A. Yes, sir.
Q. And since that time you have not resided there at all?
1046 A. No.
Q. And you have resided at a considerable distance from Darwin?
A. Yes; 60 miles.
Q. Where have you resided, here in Independence?
A. Yes.
Q. And you visited Darwin, you think, once or twice a year since that time?
A. On an average.
Q. How long would you be in Darwin at a time?
A. Not over two or three days.
Q. You may or may not have met Frank Silva on those visits?
A. Only once I did not meet him.
Q. Did you ever hear any discussion about his reputation for truth and honest purposes up to February, 1884?
A. No.
Q. He was engaged in mining or prospecting the same as he had been in Cerro Gordo?
A. Yes, sir.
Q. And was not in business or anything that would naturally give rise to anything about his character or reputation; is not that so?
A. That is so.
Q. He was simply a common miner whom no one would have occasion to notice, unless they had business with him?
A. That is so.
Q. What you have stated about his reputation from first to last, not having heard it discussed, is simply your own impression of the man?
A. Yes; and what I have seen of him.
Q. Has Silva lived in Darwin continuously since 1875?
A. That I could not say, for I was not there.
1047 Q. You do not know whether he has been residing there or not?
A. No, sir.
Q. He may have resided in different parts of the county during that period for aught you know, except about once a year when you saw him in Darwin?
A. Yes, sir.
Q. He may have been there for the same purpose you were there, simply on some business?
A. At the time I did not see him; he was working out at his mine.
Q. He lived 12 miles away from Darwin?
A. He was where his mine is.

Q. You do not know whether he resided in Darwin during those times or not?

A. I know he had his residence there.

Q. He had his residence at his mine; lived there and worked there; that is 12 miles from Darwin?

A. Yes, sir.

Q. Was any one working within 12 miles of him that you know of during that time; was he not working out there alone during all that time or nearly all of the time on his mine, in an isolated place 12 miles from any other human habitation?

A. That is what I should judge.

Q. That he himself constituted the community, except now and then a Piute, whom he had to help him to work in the mine?

A. He had other men helping him.

Q. He might have had one or two men?

A. Yes, sir.

Q. But working for him?

A. Yes, sir.

1048 Q. All this time that he has been making this wonderful reputation it was in a community where there were only one or two of his men and possibly a straggling Piute?

A. I know he has had men employed with him.

Q. Darwin was the nearest town to the mine?

A. Yes, sir.

Q. And that would be naturally the place for getting supplies for mining?

A. Certainly.

Q. Were you ever at the Stirling mine?

A. I never was.

Q. Of your own knowledge, do you know anything about its value?

A. No, sir.

Q. Never did?

A. Only what I learned from others.

Q. Just hearsay?

A. Yes, sir.

Q. Do you know whether the Stirling mine has been redeemed from the tax sales?

A. It has not according to what the tax collector tells me.

Q. Do you know whether it has or not?

A. No, sir.

Q. For aught you know it may have been redeemed?

A. For all I know it may have.

Q. What you have said about the property having been sold for taxes is simply hearsay; what you heard from the other officers?

A. No; it was given to me in writing.

Q. Writing is as much hearsay as anything else; writing coming from others?

A. Yes, sir.

Q. You said something about receiving a letter from an agent of the Southern Development Company?

A. Yes, sir.

Q. Do you know whether the person you have reference to was an agent or not of that Southern Development Company?

1049 A. He sent the money and paid the taxes on some other property.

Q. How do you know; did he pay it to you?

A. It was sent to me by Wells-Fargo's.

Q. When?

A. Last year.

Q. When did you speak about his writing to you on these other matters?

A. Last year. Last year I made them pay cash on their personal property because the year before their real estate had been sold to the State.

Q. Those communications are in writing?

A. Yes, sir.

Q. How long did you work at mining at Cerro Gordo steadily?

A. About a year and a half.

Q. Do you know whether the Stirling mine looks anything like the mine you worked in in Cerro Gordo?

A. I never was in there.

Q. Then you do not know anything about it?

A. Not about the mine.

Q. You do not know what it produces?

A. No, sir.

Q. Does the Stirling mine look like any mine you ever worked in in your life?

A. I have never seen the Stirling mine.

Q. Then you do not know whether you have had any such experience as the Stirling mine or not?

A. No; I do not know anything about the Stirling mine.

Q. Do you think the exhibits shown to you are ore?

A. They are.

Q. Do you know how much silver there is, if any, in those pieces or samples?

1050 A. I do not know how much; it is impossible for me to tell.

Q. Are you capable of telling?

A. No, sir.

Q. Can you form any idea whether there is an ounce of silver in a ton of this or not?

A. Yes; there is more than an ounce. What amount I could not tell.

Q. Do you know there are lead ores that do not carry any silver?

A. Yes, sir.

Q. Of any consequence?

A. Yes, sir.

Q. And nice looking ore?

A. Not in this country.

Q. Do you know all of this country?

A. I have seen most of the lead ores in this country.

Q. I thought your experience was confined to Cerro Gordo?
A. There is not a mining camp in this country that I have not been in.
Q. Would you say there were more than eight ounces of silver in it?
A. I would not state an amount.
Q. Would you state there are five ounces of silver in it?
A. I would not state an amount.
Q. You say you know there is more than an ounce of silver in a ton of it?
A. Yes, sir.
Q. Do you know how?
A. Yes; I believe I could prove that.
Q. I am asking you if you know there is an ounce of silver in a ton of that rock.
A. I will answer this way: By my experience all lead ores of that character and grade carry more or less silver; what amount I cannot state. I never had an assay made.
Q. Do you know that that is lead ore?
A. I do.
1051 Q. How do you know?
A. By natural experience in lead ores.
Q. Can you swear positively that that is lead ore?
A. I will swear positively that that is lead ore as much as I would swear positively that that is wood (pointing to the table).
Q. Do you know what percentage of lead it carries?
A. No, sir.
Q. You say you know all the ore in this section of the country?
A. I have been in every camp, I said.
Q. Do you mean to say there is no lead ore in this section of the country which carries lead that does not go less than an ounce of silver to the ton?
A. I have never seen the quantity.
Q. You say you know all the ores in the country?
A. I said I have been in all the camps.
Q. Have you been in the Independence mine, in Darwin?
A. Yes; before it was called the Independence.
Q. Have you ever found in that mine lead ores that would go fifty per cent. in lead that would not go an ounce in silver?
A. I have never had an assay made.
Q. Do not you know there are tons on tons of lead ores in that mine that will go twenty to twenty-five per cent. in lead and you will only get a trace of silver in it by assay?
A. I never heard of it.
Q. Then you do not know anything about it?
A. I have never had it assayed.
1052 Q. I ask you if you know if that is true or not?
A. I never heard any such thing.
Q. You do not know if it is so or not?
A. If you want me tell what I heard of the mine.
Q. I want your experience.

A. I told you I have had no assay of it.

Q. You do not know but what there are ores of the character I speak of in the Independence?

A. I do not know whether there are such ores there.

Q. Then you do not know whether there are such there?

A. No, sir.

Q. There are ores that you do not know about?

A. I do not know all the ores in the country. I said I have been in every mining camp in the country.

Q. Did you not say you knew all the ores in this section of the country?

A. No, sir.

Q. You do not pretend to know all the ores in this section of the country?

A. No, sir.

Q. You do not pretend to know the amount of silver to the ton of the samples shown you?

A. No, sir.

Q. Do you know what percentage of lead, if it carries lead, those samples carry?

A. I could not tell you exactly. I never had an assay made of them.

Q. What you have said here with reference to their being ores is mere guess-work?

A. My judgment of ores.

Q. That is merely that you guess that it is ore?

A. That it is ore. I would swear it is ore. There is metal in it.

1053 Q. What do you call ore?

A. Anything that has got metal in it.

Q. Little or much?

A. Little or much.

Q. Then if you found a vein carrying an ounce of silver to the ton, where it would cost twenty dollars to extract it, you would call that ore, would you?

A. I would.

Q. If you were working the mine would you take such rock as that out as ore, or would you put it in the waste pile?

A. It would go over the dump; it would not pay to work.

Q. Practically as a miner, speaking as a miner now, when you talk about ore you mean ore that will pay?

A. No; when I speak of ore I mean anything that carries metal.

Q. If you were mining for yourself or if you were in charge of a mine you would not tell the miners that that rock, which would go an ounce of silver to the ton, when it cost twenty dollars an ounce to take it out, was ore, and to put it in the ore pile?

A. No, sir.

Q. You would tell them to send it over the dump?

A. Yes.

Q. And treat it just as you would the country rock that you might have to take out?

A. Yes, sir.
Q. In mining you would have a waste dump?
A. Yes, sir.
Q. And an ore dump?
A. It would be assorted.
Q. If you could find any ore you would have an ore dump?
A. Yes, sir.
Q. The character of ore you speak of would be ore which would go over the dump along with the waste?
A. Certainly.
Q. You would not count anything as ore or put it in the
1054 ore pile unless it would pay for extraction and reduction, would you?
A. No; I would not.
Q. Consequently, if you were not in a place where the extraction and reduction of the ore would cost ten dollars, anything less than ten dollars would go into the waste pile and anything over the cost would be put into the ore pile?
A. Certainly; anything that would pay for working.
Q. Ore in that sense, in the practical mining sense, means such ore as will pay for extraction and reduction, at least?
A. Certainly; that is the only kind of work that would pay; a man is not going to work rock that will not pay.
Q. The other kind you would put into the waste pile, and yet you would call it ore?
A. Certainly; low grade.
Q. But it would be ore all the same?
A. Yes; as long as there was metal in it.
Q. All mineralized rock with you would be ore?
A. That which contains metal.
Q. That contains silver or any of the precious metals, or whatever metal you may be mining for?
A. Yes; certainly.
Q. If all mineralized rocks are ore, then all rock is ore, is it not?
A. No, sir.
Q. Why not?
A. There is plenty of rock that has no mineral in it.
Q. Where?
A. You can go right out into the street.
Q. Can you find any rocks on the crust of this earth that have no mineral in them?
A. I think so.
Q. What did you do in the mines in Cerro Gordo?
1055 A. I was a miner.
Q. What did you do generally; did you ever work on the windlass?
A. No; not in Cerro Gordo; I worked with the pick and drill. I worked in the shaft and tunnels.
Q. Did you ever do any carring?
A. Yes, sir.
Q. How much time did you put in running cars?

A. I could not tell. We had to run our own dirt away to the shaft.
Q. When you speak of two years do you mean that you worked steadily for two years?
A. I said I was two years in Cerro Gordo.
Q. How long did you work in Cerro Gordo?
A. I worked in the Omega and the Union mines.
Q. How long altogether?
A. A little over one year's steady work.
Q. After that what did you do?
A. Then I was deputy sheriff in Cerro Gordo.
Q. In the saloon business?
A. No, sir.
Q. You first entered the saloon business here in Independence?
A. Yes; on my own hook.
Q. How long have you been in the saloon business here in Independence?
A. Since the fall of 1875.
Q. You have carried on business for yourself during all that time?
A. One year and fifteen days I attended bar, and the balance of the time I carried on business for myself, except two months, when I was away up in Bodie.
Q. You were asked what class of ore these samples belonged to which you have examined.
A. I told him I did not know what class.
1056 Q. Are not lead ores classified?
A. Certainly; by what they assay.
Q. Have they not particular names?
A. Yes, sir.
Q. What would you call the samples that you have examined?
A. I would call them lead ores—lead and iron.
Q. Ores such as are taken out and saved are all lead ores in a lead mine; but is there no other classification?
A. Yes, sir.
Q. What is it by name?
A. There are some six or seven or eight or ten.
Q. What are they?
A. I could not tell you all the names.
Q. Have you forgotten all your mining phrases?
A. Yes, sir.
Q. Every single one?
A. I should have to think of them. I used to know them all.
Q. Are there not two great classes in lead mines?
A. Yes, sir.
Q. What are they?
A. Galena. I could not tell you the other one.
Q. Have you forgotten?
A. Yes, sir; I have. I cannot think of the name.
Q. Is it not carbonate?
A. Yes, sir; and there are three or four different kinds of carbonate.
Q. Carbonate is carbonate?

A. There is grey carbonate and yellow carbonate.
Q. The two grand classifications are galena and carbonate ores?
A. Yes, sir.
Q. Did you ever work in a mine where there was lead, galena, and no carbonates?
1057 A. No; you would find more or less carbonate in the mines that I have worked in.
Q. Do you always find it in spar veins; do you find carbonate ores mixed with galena in spar veins?
A. What do you mean by a spar vein?
Q. Do you not know what a spar vein is?
A. I do not know what you mean.
Q. You do not?
A. No, sir.
Q. Do not you know there are veins composed of spar and lead—galena?
A. Something like that rock there?
Q. I ask you if you know what spar veins are.
A. No; I never heard them called that.
Q. Never heard anything of that kind?
A. No, sir; not that I know of. I have seen spar in the ore. I have never heard them called spar veins.
Q. Do you know anything about the composition of lead ores—the constituent parts of galena, say?
A. No; I do not.
Q. You do not know anything at all about that?
A. I could not tell you about ores—only ores that as a miner I have had experience with. I have no scientific knowledge of it.
Q. Do you know what the constituent parts of carbonate ores are?
A. Yes, sir.
Q. What are they?
A. Lead and silver.
Q. Is that all?
A. That is all—antimony.
Q. Is it necessarily antimony?
A. I do not know it is; they generally are.
1058 Q. That is all you know? You do not know anything about what they are made up of?
A. No, sir.
Q. You have not mined any for how many years?
A. Not since 1875.
Q. Did you mine any in 1875?
A. Yes, sir.
Q. Where?
A. Panamint.
Q. That was in the silver mines?
A. Yes, sir.
Q. How long did you mine there?
A. About three months.
Q. Did you work there?
A. Yes, sir.

Q. Did you work any in 1874 in lead mines?
A. No, sir.
Q. Did you work any in 1873 in lead mines?
A. I want to correct myself. I said I mined in 1875; it was in 1874 when I worked in Panamint.
Q. Did you work any in 1873?
A. Yes, sir.
Q. In lead mines?
A. Yes, sir.
Q. In Cerro Gordo?
A. Yes; sir.
Q. Was it not in 1872?
A. No; in 1873.
Q. You have not mined any since 1874?
A. Yes, sir.
Q. Twelve years?
A. That is, the last mining I did at Panimint.
Q. And you have forgotten nearly all about it? You have forgotten the names?
A. I have forgotten the names. I believe I could hit a drill as well as ever.
Q. You could do that in a blackmith shop?
A. Not all men can.
Q. Have you taken any interest in this suit?
A. No; nothing particular.
Q. Have you expressed your opinion about it at any time?
1059 A. Oh, yes.
Q. You have asserted your opinion very freely in the matter at different times?
A. I have never held myself back any.
Q. You are a friend of Silva, the defendant?
A. Not in any way in particular.
Q. You have a desire that he should win?
A. I have, for my opinion is for him.
Q. You are assessor of the county?
A. I am.
Q. You have talked the matter over in various sections of the county?
A. In various places.
Q. And argued your side of the question?
A. No, sir.
Q. You have given your opinion and reasons?
A. Yes, I have done that.
Q. And no doubt convinced others that your opinion was correct?
A. Whether they were convinced or not that I cannot say.
Q. You endeavored to convince them?
A. No, I just expressed my opinion; I did not want to make an impression.
Q. You expected to make an impression?
A. No, sir.

Q. You did not expect every one in the county to listen to your opinion and hear what you had to say and that they would not be affected by it?

A. Oh, no. It might affect some more or less. There is no doubt about that. I never talked to make any effect, for I do not feel enough interest in it.

Q. You have taken no interest at all in this matter?

A. That is, financially?

1060 Q. Yes.

A. No, sir.

Q. You have taken no stock in it, as they say?

A. No, sir.

(Signed) JOHN C. IRWIN.

1061 JOHN S. MCGEE, a witness on behalf of the respondent sworn:

Mr. MINER:

Q. What is your name, age, place of residence, and occupation?

A. My name is John S. McGee; age, thirty nine; occupation, sheriff of the county of Inyo; residence, Independence.

Q. You are *ex officio* tax collector?

A. Yes, sir.

Q. Are you acquainted with the mine known as the Stirling mine, being one of the claims described in the complaint in this action?

A. I am not acquainted with the mine?

Q. You have heard of it?

A. Yes, sir.

Q. Do you know whether that mine was sold for taxes or not?

(Objected to by complainant on the ground that it is immaterial and irrelevant.)

A. Yes, sir; that was sold for taxes.

Q. What book is this that you have?

A. The book that we keep in the tax collector's office showing property sold for taxes.

Mr. MINER: I will offer in evidence page 248.

(Objected to by complainant on the ground that the evidence is incompetent as evidence of the sale.)

Mr. MINER: I offer the following from page 248:

"*Description of Property Sold to the State for Taxes of* 1884.

"Certificate No. 54.

"1,500 feet in the Stirling mine, situated in the Coso mining district.

1062 "Assessed to Southern Development Company $1,650. Sold to the State, February 27th, 1885, for $57.82."

Q. Is this the book that you keep in accordance with the law—that you are required to keep?

(Objected to as a question of law, and as immaterial, irrelevant, and incompetent for the purpose of proving the sale.)

A. Yes, sir.

Q. Is this the book that you keep under section — of the political code of the State of California, containing entries sold to the State for taxes?

(Objected to as immaterial, irrelevant, and incompetent.)

A. Yes, sir.

Q. What is this book?

A. It is the delinquent assessment roll of Inyo county.

Q. Does it show anything relating to the sale of this property to the State for taxes?

(Same objection by complainant.)

A. Yes, sir.

Q. What page?

A. Page 18.

Q. Is this the entry in this book relating to this property on page 18, commencing with the Southern Development Company and describing the Stirling mine?

(Same objection by complainant.)

A. Yes, sir.

Mr. MINER: I offer in evidence page 18 of the assessment book of the property of Inyo county for the year 1884, being the delinquent assessment book of said county, showing the description of the property and the entry sold to the State.

1063 (A certified copy of the above is read in evidence and marked "Respondent's Exhibit P.")

(Objected to by complainant as immaterial, irrelevant, and incompetent to prove any fact in issue in this case, or that the property was sold.)

Q. I will ask you if the taxes or any portion of the taxes on said mine since the year 1883 have ever been paid?

(Objected to by complainant on the ground that the witness is not the officer to whom such taxes should be paid.)

A. I do not know; not as long as it was in my office it was not.

Q. Are not you tax collector now?

A. Yes, sir.

Q. How long have you been tax collector?

(Objected to as irrelevant and immaterial.)

A. Since 1885.

Q. Have any taxes — paid to you as tax collector on this Stirling mine since you went into office in 1885?

A. No, sir.

Q. What time did you go into office in 1885?

(Same objection by complainant.)

A. January, 1885.

Q. Who was tax collector before 1885?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. Mr. Gregg.

(No cross-examination.)

(Signed) JOHN S. McGEE.

1064 DANIEL CROUGH recalled for respondent.

Mr. MINER:

Q. Were you deputy tax collector of this county in the year 1884?

Objected to by complainant on the ground that such a question is not a proper way to prove the witness' official position, and that it is immaterial and irrelevant.)

A. I was.

Q. Who was tax collector and sheriff of this county in 1884?

(Objected to on the ground that it is not the proper way to prove the official position of the sheriff.)

A. Stephen G. Gregg.

Q. Were you appointed by him as deputy or under sheriff?

(Objected to by complainant on the ground that it is irrelevant and immaterial, and that it is not the proper way to prove the witness' official position.)

A. I was.

Q. Where is your appointment?

(Objected to by complainant as immaterial and irrelevant. The appointment proves its own existence.)

A. It is filed in the office of the county clerk. I will get it.

Q. Is that your appointment as under sheriff (producing paper)?

A. That is my appointment. I wrote it out myself.

Mr. MINER: I now offer in evidence appointment of witness as under sheriff by Stephen G. Gregg, filed January 8th,
1065 1883, in the county clerk's office of Inyo county.

(Objected to by complainant as irrelevant, immaterial, and incompetent, and that it does not appear that Stephen G. Gregg was sheriff or tax collector of Inyo county.)

(Counsel for respondent states that he will connect this evidence with other evidence proving the election and qualification of Stephen G. Gregg as sheriff of the county of Inyo and *ex officio* tax collector, and reads the following document in evidence:

"*Certificate of Appointment.*

"STATE OF CALIFORNIA, } ss:
"*County of Inyo,* }

"On this eighth day of January, 1883, I, Stephen G. Gregg, sheriff of Inyo county, State of California, have appointed Daniel Crough, Inyo county, under sheriff, and by these presents do hereby authorize him to transact all duties pertaining to that office that I myself might legally do.

"STEPHEN G. GREGG,
"*Sheriff, Inyo Co., Cal.*

"STATE OF CALIFORNIA, } ss:
"*County of Inyo,* }

"I, Daniel Crough, do solemnly swear that I will support the Constitution and laws of the United States — of the State of California and will faithfully perform the duties of under sheriff of Inyo
1066 county to the best of my ability, so help me God.

"DANIEL CROUGH.

"Subscribed and sworn to before me this 8th day of January, 1883.

"JOHN A. HANNAH,
"*Superior Judge.*"

(Endorsed:) "State of California, county of Inyo. Appointment. Name, Daniel Crough. Office, under sheriff. By Stephen G. Gregg, Sheriff, Inyo Co., Cal. Filed January 8th, 1883. John Crough, clerk, by Thos. Crough, deputy."

Q. Were the taxes paid by any one upon the Stirling mine for the year 1884?

(Objected to as immaterial, incompetent, and it is not shown that the witness is the proper officer to receive such taxes.)

A. The taxes were not paid in 1884.

Q. When did Mr. Gregg's office expire?

(Objected to by complainant on the ground that it is immaterial and irrelevant, and it is not shown he ever held any office.)

A. The first Monday in January, 1885.

Q. From the 15th day of February, 1884, until the first Monday in January, 1885, were the taxes upon this Stirling mine paid by any person?

(Objected to by complainant as irrelevant, immaterial, and incompetent. It is not shown that the witness is a public officer or one authorized to receive such taxes.)

1067 A. I stated that the taxes were not paid.

Cross-examination by Mr. REDDY:

Q. Do you mean by that that they were not paid to you?
A. I mean they were not paid into our office during the time I was in office.
Q. I am simply asking a plain question. When you say they were not paid you mean to say they were not paid to you. Can you know what was paid to any other man when you were absent?

(Objected to by respondent on the ground that it appears the witness was deputy under sheriff and the law presumes an officer to have performed his duty.)

A. I know they were not paid because they were not balanced on the books.
Q. I ask you if you know that the money was not paid to the person that you claimed to be your superior officer?
A. The money was not paid to me.
Q. That is what I asked in the first place. Do you mean to say you know as a fact, of your own knowledge, that the money was not paid to Stephen G. Gregg, whom it is claimed was your superior?
A. I do not know but what the money was paid to Mr. Gregg; he may have got a million dollars, for all I know.

Redirect examination by Mr. MINER:

Q. Who kept the books of that office during the time you were under sheriff?
A. I kept the books.
1068 Q. Have you examined the books to see if these taxes were ever paid?

(Objected to by complainant as immaterial and incompetent to prove payment or non-payment.)

A. I have examined the books.
Q. Have those books been balanced and proved?

(Objected to as immaterial, irrelevant, and incompetent.)

A. We balanced the books when we delivered them to Mr. McGee.
Q. Is there any entry in those books showing any payment of taxes upon this property for the year 1884?

(Objected to by complainant, as it calls for secondary evidence. The books themselves are the best evidence of the entries therein.)

A. There is no entry.
Q. There is no entry showing taxes paid by the Southern Development Company of Nevada upon that property; is that what you mean?
A. That is what I mean.
(Signed) DAVID CROUGH.

1069 R. L. PEELER, a witness on behalf of respondent.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.
A. Age, twenty-two; residence, Inyo county; occupation, deputy county clerk.
Q. Of Inyo county, California?

(Objected to by complainant as not being the proper mode of proving the gentleman's official position, if he has any.)

A. Yes, sir.
Q. State what this paper is that I now hand you.

(Objected to by complainant as immaterial and irrelevant.)

A. It is the certificate of election of Stephen G. Gregg to the office of sheriff, with oath of office affixed, filed November 27th, 1882, by John Crough, county clerk.
Q. Does that belong to the files of the county clerk's office of Inyo county?
A. It does.

Mr. MINER: I now offer this document in evidence as tending to prove the official capacity of Stephen G. Gregg.

(Objected to by complainant as immaterial and irrelevant.)
(Counsel for respondent reads the following document:)

"UNITED STATES OF AMERICA.

"STATE OF CALIFORNIA, } ss:
County of Inyo. }

"I, John Crough, county clerk in and for the county of
1070 Inyo, in the State of California, do hereby certify that at a general election held in and for said county of Inyo on the 7th day of November, one thousand eight hundred and eighty-two, S. G. Gregg was duly elected to the office of sheriff and *ex-officio* tax collector, as appears by the official returns of said election and the statement of votes cast, now on file in my office.

"In witness whereof I hereunto affix my hand and the seal of the superior court of said Inyo county this 15th day of November, one thousand eight hundred and eighty-two.

"[SEAL.] JOHN CROUGH, *Clerk.*

"STATE OF CALIFORNIA, *County of Inyo:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of the State of California, and that I will faithfully discharge the duties of sheriff and *ex officio* tax

collector of Inyo county, State of California, according to the best of my ability, so help me God.

"STEPHEN G. GREGG.

"Subscribed and sworn to before me this 27th day of November, 1882.

"JOHN CROUGH, *Clerk*,
"[SEAL.] By JOSEPH SCHALTER, *Deputy*."

Q. Did Mr. Gregg qualify as sheriff of this county at that time?

(Objected to as immaterial and irrelevant, and it is incompetent as to proof of his qualification.)

A. He took the oath of office, as appears in the record.

1071 Q. Did he file a bond?

(Objected to as immaterial and irrelevant.)

A. I could tell by looking at the record. I did not look it up.
Q. Did not you find a bond on file?
A. I did not look for the bond that he gave. I can look.
Q. Did Mr. Gregg act as sheriff from the date of that appointment offered in evidence; up to what time, if you know?

(Objected to as immaterial and irrelevant.)

A. Up to the first Monday in January, 1885.
Q. I will ask you what this book is that I now show you?
A. The record of the board of supervisors of Inyo county, book "B."
Q. Of the records of the county clerk of Inyo county?
A. The clerk of the board of supervisors.
Q. Will you get the bonds showing that he qualified?
A. There they are (producing).
Q. Are these the bonds filed by Mr. Gregg under that certificate of election put in evidence?

(Objected to by complainant as immaterial and irrelevant.)

A. Yes; as they appear on file.

Mr. MINER: Now I offer these bonds, showing that Stephen G. Gregg qualified as sheriff of that office, and also as tax collector.

(Objected to as immaterial and irrelevant.)
(Counsel for respondent reads in evidence the following documents:)

1072 "Know all men by these presents that we, Stephen G. Gregg, as principal, and Peter Laird, Fred. Uhlemeyer, N. Petersen, John Mulane, Albert Halverson, F. M. Turner, J. W. McMurry, J. J. Moore, Richard Hessian, as sureties, are held and firmly bound unto the State of California in the following penal sum, to wit: The said principal in the penal sum of ten thousand dollars,

and the said sureties in the following penal sums, to wit: Peter Laird in the penal sum of two thousand dollars, Fred. Uhlemeyer in the penal sum of two thousand dollars, N. Petersen in the penal sum of two thousand dollars, John Muland in the penal sum of two thousand dollars, Albert Halverson in the penal sum of two thousand dollars, F. M. Turner in the penal sum of one thousand dollars, J. W. McMurry in the penal sum of two thousand dollars, J. J. Moore in the penal sum of one thousand dollars, Richard Hessian in the penal sum of six thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 23rd day of November, 1882.

"The condition of the above obligation is such that whereas the above-bound principal, Stephen G. Gregg, was, at a general election held in said State on the 7th day of November, 1882, duly elected to the office of sheriff and *ex officio* tax collector in and for Inyo county and State aforesaid:

"Now, therefore, the condition of this obligation is such that if the said Stephen G. Gregg shall well, truly, and faith-
1073 fully perform all official duties now required of him by law, and shall well, truly, and faithfully execute and perform all the duties of such office of sheriff required by any law to be enacted subsequently to the execution of this bond, then this obligation is to be void and of no effect; otherwise to remain in full force and virtue.

"STEPHEN G. GREGG. [SEAL.]
"PETER LAIRD. [SEAL.]
"FRED. UHLEMEYER. [SEAL.]
"NICHOLAS PETERSON. [SEAL.]
"JOHN MULLANE. [SEAL.]
"ALBERT HALVERSON. [SEAL.]
"F. M. TURNER. [SEAL.]
"J. W. McMURRY. [SEAL.]
"J. J. MOORE. [SEAL.]
"RICHARD his x mark. HESSIAN. [SEAL.]

"Signed, sealed, and delivered in the presence of—
"JOHN KINNEY.
"JAMES McCARTY.

"STATE OF CALIFORNIA, *County of Inyo,* } ss:

"Peter Laird, Fred. Uhlemeyer, Nicklas Petersen, John Mullane, Albert Halverson, F. M. Turner, J. W. McMurry, J. J. Moore, and Richard Hessian, whose names are subscribed as sureties to the within bond, being severally duly sworn each for himself, deposes and says that he is a resident and freeholder and householder within said Inyo county; that he is worth the amount for which he becomes surety on said bond over and above all debts and liabilities

in unincumbered property situated within this county, ex-
1074 clusive of property exempt from execution and forced sale.

"PETER LAIRD.
"FRED. UHLMEYER.
"JOHN MULLANE.
"ALBERT HALVERSON.
"F. M. TURNER.
"J. W. McMURRY.
"J. J. MOORE.
his
"RICHARD x HESSIAN.
mark.

"Subscribed and sworn to before me this 23rd day of November, 1882.

"[SEAL.] JOHN CROUGH,
"*County Clerk.*
"By JOSEPH SCHALTER, *Deputy.*

"(Endorsed:) Bond of S. G. Grigg as sheriff. I approve the within bond. Witness my hand this 25th day of November, 1882. John A. Hannah, superior judge Inyo Co., Cala. Filed for record this 25th day of November, 1882, at 12 o'clock and 35 minutes p. m., and recorded in book 'B' of official bonds, page 448, records of Inyo county. John Crough, county recorder, by S. P. Moffat, deputy. Filed this 25th day of November, 1882, by John Crough, clerk.

1075 "Know all men by these presents, that we, Stephen G. Gregg, as principal, and Robert A. Russell, John Clarke, William B. Hutchings, George M. Clarke, William J. Phillipay, Louis Munzinger, John S. McGee, William O. Harrell, Barna Peeler, and Henry J. Evans, all of Inyo county, State of California, as sureties, are held and firmly bound unto the State of California in the following penal sums, to wit: The said principal in the penal sum of thirty thousand dollars, and the said sureties in the following penal sums, to wit: Robert A. Russel in the penal sum of six thousand ($6,000) dollars, John Clarke in the penal sum of six thousand ($6,000) dollars, William B. Hutchings in the penal sum of three thousand ($3,000) dollars, George M. Clarke in the penal sum of three thousand ($3,000) dollars, William J. Phillipay in the penal sum of two thousand ($2,000) dollars, Louis Munzinger in the penal sum of two thousand dollars, John S. McGee in the penal sum of two thousand dollars, William O. Harrell in the penal sum of three thousand dollars, Barna Peeler in the penal sum of one thousand dollars, Henry J. Evans in the sum of two thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 20 day of November, 1882.

"The condition of the above obligation is such that whereas the above-bound principal, Stephen G. Gregg, was, at a general election held in said county on the seventh day of November, 1882,
1076 duly elected to the office of sheriff and *ex officio* tax collector in and for Inyo county and State aforesaid:

"Now, therefore, the condition of this obligation is such that if the said Stephen G. Gregg shall well, truly, and faithfully perform all official duties not required of him by law, and shall well, truly, and faithfully execute and perform all the duties of such office of tax collector required by any law to be enacted subsequently to the execution of this bond, then this obligation is to be void and of no effect; otherwise to remain in full force and virtue.

"STEPHEN G. GREGG.	[SEAL.]
"R. A. RUSSELL.	[SEAL.]
"JOHN CLARKE.	[SEAL.]
"W. B. HUTCHINGS.	[SEAL.]
"G. M. CLARKE.	[SEAL.]
"W. J. PHILLIPAY.	[SEAL.]
"L. MUNZINGER.	[SEAL.]
"J. S. McGEE.	[SEAL.]
"WM. O. HARRELL.	[SEAL.]
"BARNA PEELER.	[SEAL.]
"HENRY J. EVANS,	[SEAL.]

"Signed, sealed and delivered in the presence of—
SETH G. SNEDEN.

"STATE OF CALIFORNIA, *County of Inyo,* } ss:

"Robert A. Russell, John Clarke, William B. Hutchings, George M. Clarke, William J. Phillipay, Louis Munzinger, John S. McGee, William O. Harrell, Barna Peeler, and Henry J. Evans and whose names are subscribed as sureties to the within bond, being
1077 severally duly sworn, each for himself deposes and says that he is a resident and freeholder and householder within said Inyo county; that he is worth the amount for which he becomes surety on said bond over and above all debts and liabilities in unincumbered property situated within this county, exclusive of property exempt from execution and forced sale.

"R. A. RUSSELL,	6,000.
"JOHN CLARKE,	6,000.
"W. B. HUTCHINGS,	3,000.
"G. M. CLARKE,	3,000.
"W. J. PHILLIPAY,	2,000.
"L. MUNZINGER,	2,000.
"JOHN S. McGEE,	2,000.
"WM. O. HARRELL,	3,000.
"BARNA PEELER,	1,000.
"HENRY J. EVANS,	2,000.

"Subscribed and sworn to before me this 21st day of November, 1882.

"JOHN CROUGH, *Co. Clerk,*
"By SETH G. SNEDEN, *Deputy.*

"(Endorsed:) Bond of Stephen G. Gregg as tax collector. I approve the within bond. Witness my hand this 25th day of November, 1882. John A. Hannah, superior judge, Inyo county, Cala. Filed for record this 25th day of November, 1882, at 12 o'clock and 30 minutes p. m., and recorded in Book "B" of official bonds, page 446, records of Inyo county. John Crough, county recorder, by S. P. Moffat, deputy. Filed this 25th day of November, 1882. John Crough, clerk, by (signed) R. L. Peeler."

1078 GEORGE H. HARDY, a witness on behalf of respondent, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.
A. George H. Hardy; age, thirty-nine; occupation, treasurer of Inyo county; residence, Independence.
Q. How long have you been treasurer of this county?
A. Nearly seven years.
Q. Have you a certificate of sale of the Stirling mine, being the mine mentioned in the pleadings in this action, what is called a certificate of sale for taxes?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. Yes, sir.
Q. Produce it.
A. Here it is (producing).
Q. Is this the certificate of sale?
A. Yes, sir.
Q. From whom did you receive this certificate of sale?
A. From the tax collector.
Q. What is his name?
A. John S. McGee.
Q. Tax collector of Inyo county?
A. Yes, sir.
Q. Did you receive this in discharge of your official duties as treasurer of this county?
A. Yes, sir.

Mr. MINER: I now offer in evidence the certificate of sale for taxes of 1884, county of Inyo, certificate No. 54, from John S. McGee, tax collector, to the people of the State of California.

Q. Is this certificate filed in your office?
A. Yes, sir.

Mr. MINER: The certificate is in the words and figures fol-
1079 lowing.

Mr. REDDY: Objected to as immaterial and irrelevant.

Mr. MINER: I will read it. It is as follows:

"1884.

"*Certificate of Sale of Real Estate.*

"Sold for the non-payment of State and county taxes for the fiscal year 1884.

"STATE OF CALIFORNIA, } ss:
"*County of Inyo,* }

"I, John S. McGee, tax collector of the county of Inyo, do hereby certify that, by virtue of chapter 7, title IX of part III of the 'Political Code of the State of California,' I, John S. McGee, the tax collector of the county aforesaid, heretofore and at the time hereinafter mentioned did, on the third Monday in January, 1885, deliver to the auditor of the said county a complete 'delinquent list' of all persons and property then owing taxes in said county to the State of California and to the county of Inyo, together with the costs and charges due thereon, which said delinquent list did include the property first hereinafter described in this certificate; that the said property was assessed for the fiscal year ending June 30th, 1884, for State and county taxes at $1,650 to Southern Development Company; that the property assessed, situated, lying, and being within the county of Inyo and described thus: 1,500 feet in the Stirling mine, situated in Coso mining district, was, on the 26th day of February, 1885, in accordance with law, offered for sale to pay
1080 said taxes, at public auction, in front of the county court-house in said county, to the bidder who was willing to take the least quantity or smallest portion of the interest in said land and pay the taxes, costs, and charges due thereon, which taxes, costs, and charges amounted to fifty-seven $\frac{82}{100}$ ($57.82) dollars.

"That on said day there was no purchaser in good faith for the same or any part thereof; that thereafter, to wit, on the 27th day of February, 1885, to which day I had postponed the sale, I again offered, in accordance with law, the said property for sale to pay the said taxes at public auction, in front of the county court-house, in said county, and there being no purchaser in good faith for the same or any part of it I did then and there strike off to the People of the State of California, as purchasers, the whole of said property for the amount of said taxes, costs, and charges, to wit, the sum of fifty-seven $\frac{82}{100}$ dollars, whereby the People of the State of California became the purchasers of the last above-described piece or parcel of land so sold as aforesaid for said taxes; and I do further certify that the said real estate was sold subject to the redemption, pursuant to the statute in such cases made and provided, and that unless redeemed within twelve months from the date of this purchase said purchasers will be entitled to a deed at the expiration of twelve months from date of sale.

"Given under my hand this twenty-eighth day of February, 1885.
"JOHN S. McGEE,
"*Tax Collector of the County of Inyo.*"

1081 Q. Has that property sold under that sale for taxes, as stated in this certificate, ever been redeemed and the taxes been paid upon it by the complainant in this action or any other person?
A. No.

Cross-examination by Mr. REDDY:

Q. Has the State ever sold it to any one?
A. No, sir.

Re-examination by Mr. MINER:

Q. How do you know whether the State sold it to any one or not?
A. Because I think I would have been notified of it if it had been sold.
Q. Is it usual for the State to notify you when property bid in by it at a sale for taxes has been by the State sold to another party?

(Objected to by complainant as irrelevant, immaterial, and asking for the opinion of the witness on a question of law.)

A. I understand that it is necessary that I should be notified or know something of it.
Q. I ask you if the State does as a fact give you notice?

(Objected to by complainant as immaterial and irrelevant.)

A. The State has never given me notice.
Q. Then it is not usual for the State to do it?
A. I do not think the State has ever sold a piece of property in this county.

1082 Recross-examination by Mr. REDDY:

Q. If there had been any redemption the money has to be paid in to you?
A. Yes, sir.
Q. If there has been any sale of it the money must go to you as treasurer of the county?
A. I think so.
(Signed) GEO. H. HARDY.

1083 E. H. EDWARDS, a witness on behalf of respondent, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.
A. Age, 47; residence, Lone Pine, Inyo county; occupation, merchant.
Q. How long have you lived in Inyo county, California?
A. About fifteen years.

Q. Are you acquainted with the mine known as the Stirling mine, described in the pleadings in this action?

A. I am, sir.

Q. How long have you been acquainted with that mine?

A. Since 1874, I think.

Q. Did you ever have any interest in that mine? If so, state when.

A. I bought an interest in that mine, I believe, in 1873 or 1874. It is on record here.

Q. How long did you own an interest in that mine?

A. From that time until 1876.

Q. Who did you sell out to, if any one?

A. To Frank Silva.

Q. Look at this map, marked "Respondent's Exhibit E." I call your attention to the point marked "point of location." Does that illustrate to you the point of location?

A. Yes, sir.

Q. Are you acquainted with that place marked "point of location?"

A. Yes, sir.

1084 Q. Who made that cut, if you know?

A. A man named Stirling and others.

Q. Was that work done at the point of location when you were an owner in the mine?

A. Yes, sir.

Q. About what year was that done?

A. Part in 1875 and part in 1876.

Q. Describe what the work at the point of location was at the time you sold the mine to Frank Silva; the work which you had done before you sold to him.

A. There was a cut driven in there and a shaft sunk in the cut.

Q. How far was the cut driven in?

A. I am not positive as to the distance; the cut may have been twenty or thirty feet.

Q. You say there was a shaft sunk. How deep was the shaft sunk?

A. Probably eight feet.

Q. State the condition of that shaft and cut at the time you sold to Silva.

A. That shaft was filled up at the time I sold to Silva.

Q. Did Silva know that that shaft had been sunk there at the time he purchased the mine?

A. Not to my knowledge.

Q. Did he know that it had been filled up?

A. Not to my knowledge.

Q. Who filled it up?

A. A man named Stirling; he was a part owner in the mine.

Q. Why was that shaft filled up?

A. We did not want to sink any further on it; the ore was not looking well.

1085 Q. Did you extend the cut down into the hill after having sunk the shaft?

A. Yes; I did.

Q. State with what dirt you filled up the shaft.

A. With the excavation from the tunnel further in the hill from the shaft.

Q. As you went further into the hill did you throw the dirt further out of the tunnel and the drift into this shaft?

A. Yes, sir.

Q. Was Stirling a partner of yours in the mine?

A. He was.

Q. Did you or your partners or either of them inform Silva about this shaft having been sunk at the time you sold him the mine?

A. I could not say anything about my partners.

Q. Did you?

A. I did not.

Q. I will ask you if there was any ore at this point of location outside of any ore that might have been in the little shaft.

A. There was.

Q. At what point near the point of location?

A. To the left of the shaft, in from the gulch, as you go in from the cut.

Q. Is there anything upon that map at the point of location that would illustrate where that ore was?

A. Yes; there (pointing).

Q. What is that marked?

A. To the left of the shaft. That would indicate where the ledge was in the ore.

Q. Is it the point marked on the map "width of croppings, 9 feet?"

A. Yes; that would be the point.

1086 Q. That purple-colored spot would mark about where the ore was?

A. Yes, sir.

Q. Was there any ore at the end of the tunnel or drift that was run in beyond the little shaft?

A. There was ore on the side of the little drift; the drift was run alongside.

Q. Why was that shaft filled up?

A. The shaft was filled up because we did not want to sink any further there; the ore had partly given out, and we intended to build a cabin there so as to be near the other work on the mine.

Q. Did you work at other places on the mine after filling up that shaft?

A. Yes, sir.

Cross-examination:

Mr. REDDY:

Q. For what purpose did you buy that mine—that is to say, what use did you intend to make of it; did you intend to work it?

A. We were prospecting it, intending to work it.

Q. Open it up?
A. Yes, sir.
Q. If it was a paying property, to work it or sell it, as you might deem to your advantage?
A. Yes, sir.
Q. You had a practical use to make of it; it was not to let it lie there for the purpose of selling it; you intended to develop it?
A. Yes, sir.
Q. You did work at various points in the mine, looking for a body of ore?
A. Yes, sir.
1087 Q. Seeking a place where the ore would be found in quantity sufficient to pay or warrant you in working, I presume?
A. Certainly.
Q. That was your purpose in starting in at the point marked "point of location" and running in your cut to ascertain what was there?
A. Yes, sir.
Q. When you ran this cut and cross-cut, this ore streak there, it looked quite favorable, did it not?
A. It looked favorable on that crop.
Q. You sunk down seven or eight feet, whatever the distance may have been, and you found that the prospect diminished very rapidly as you went down, so that you really had no prospect sufficient to warrant you in going on at whatever the shaft may have been in depth?
A. Yes, sir.
Q. For that reason you abandoned the work at that point and filled it in?
A. Yes, sir.
Q. After it was filled in the cut and ore had the same favorable appearance that it had when you first made the cross-cut there; it put it in the same appearance as before?
A. I do not understand.
Q. Let me see if I make myself clear. You went in with a cross-cut?
A. Yes, sir.
Q. It looked well, then, as though the ore on the sides would extend downwards?
A. Yes, sir.
Q. Which induced you to sink down a shaft?
A. Yes, sir.
Q. After going a depth, whatever the distance may have been, you found the prospect was not good, and quit?
A. Yes, sir.
1088 Q. You afterwards filled in that shaft?
A. Yes, sir.
Q. After it was filled in that cross-cut had about the same appearance that it had before you sunk the shaft?
A. No, sir.
Q. In what respect would it differ?

A. It would differ, having driven across the ledge—cut it through at that point.

Q. You had gone beyond it?

A. Yes, sir.

Q. At the immediate point where you sunk on the ore it had the same appearance that it had before you sunk the shaft?

A. Yes, sir.

Q. After it had been used for cabin and kitchen purposes for a length of time the ground had been tramped over and you could not tell whether there had been a shaft sunk or not?

A. No, sir.

Q. The ore which you say was near that point of location, near the surface, did that amount to much; what was the size of it—I mean that little purple spot?

A. On the surface it was quite a cropping. At the bottom of the cut it diminished, and was not as large.

Q. The cut and the shaft proved there was not sufficient there to warrant you in going on with the work?

A. Yes; at that point.

Q. For that reason you turned it into a kitchen or house of some kind and covered it over?

A. Yes, sir.

Q. Had Mr. Silva worked for you on that mine before you sold it to him?

A. No, sir.

Q. He had never worked there at all?

A. Not for me.

1089 Q. I understand you to say you do not know whether he was informed about that shaft having been sunk there or not.

A. Not by me.

Q. After the shaft was filled up, the appearance there was very favorable. The ore on the sides—it looked quite favorable, after it was filled up. Where one could not see down, and not knowing the shaft had been sunk, they would think it a good prospect, as you deemed it to be before you sunk the shaft; is not that so?

A. It looked better than it did when the shaft was over it. It did not look as well as before the cut was driven in.

Q. The croppings that you saw after putting in the cut, and before putting in the cut and sinking the shaft, were sufficient to induce you to sink the shaft?

A. Yes, sir.

Q. After you had sunk the shaft you were satisfied it was not?

A. Not at that point.

Q. Do you remember about what time you gave possession of the mine to Salva?

A. It is on record, but I could not be positive.

Q. What is your best recollection of that?

A. I think it was some time in 1876, in the summer of 1876.

Q. Do you know whether Mr. Silva had any equitable interest in that mine prior to its sale to you—that is, had he any interest with Mr. Stirling or any other of the owners of the mine?

A. I believe not.

1090 Q. He made a clear purchase of the property?

A. Yes, sir.

Q. Did the conveyance run from yourself and Stirling to Silva?

A. And another partner.

Q. What was his name?

A. Dunlap. Dunlap and Stirling were the co-owners of the mine with me.

Q. You were aware of all these facts that you have testified to, were you not—that is to say, you knew all about the work that had been done up to the time that you sold to Mr. Silva?

A. Yes, sir.

Q. You made no representation to him as to the condition of the ground or what work had been done?

A. No, sir.

Q. You were not asked?

A. I do not know that I was.

Q. If you had been you would have stated the facts as they were?

A. Yes, sir.

Q. Your impression is that no questions were asked you about the matter?

A. No; nothing more than as to the work done.

Q. Had you ever seen Silva on that mine before you sunk that shaft?

A. No, sir.

Q. Do you know of his being there at any time while that work was being done?

A. No, sir.

Q. You do not know whether Silva knew of that fact or not?

A. No, sir.

Q. He may or may not, so far as you know?

A. He may or may not.

1091 Re-examination:

Mr. MINER:

Q. When did you first inform Silva, if you ever did, that that shaft had been sunk?

A. It was after the suit was commenced.

Q. After the criminal case against Silva had commenced?

A. Yes, sir.

Q. That was the first time you ever informed Silva that you sunk that shaft?

A. Yes; I was asked by him if I had done it.

Q. You told him that it had been done?

A. I told him it had been done at the time that I was part owner there.

(Signed.) E. H. EDWARDS.

1092 THOMAS BOLAND, a witness on behalf of respondent, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.

A. Thomas Boland; age, 43; residence, Keeler; occupation, merchant.

Q. Did you ever have any conversation with H. M. Yerington preceding the sale of the Stirling mine by Silva to the Southern Development Company of Nevada? If so, state where.

A. Previous to the sale of the mine by Silva Mr. Yerington authorized me to make an offer to Mr. Silva for the mine.

Q. At what place did he authorize that?

A. At Keeler.

Q. Inyo county, California?

A. Yes, sir.

Q. About what time?

A. I could not place the time exactly. Several months before the sale.

Q. Do you remember the circumstance of Mr. Yerington and Mr. Forman going down to visit the mine in January, 1884?

A. Yes, sir.

Q. Was it prior to that time that this conversation occurred between you and Mr. Yerington?

A. It was.

Q. Now, state what the conversation was, and where did it take place?

A. Mr. Yerington asked me if I was going to Darwin soon. I told him that I thought I would be going in a couple of days.

1093 He told me to tell Silva that he would pay him ten thousand dollars for the mine.

Q. Did you convey that message to Silva?

A. I did not.

Q. To any person?

A. I did.

Q. To whom?

A. I told Mr. McKenzie to tell Mr. Silva. He came in shortly after. I did not go to Darwin at the time I expected.

Q. Do you know Charles Anthony?

A. Yes, sir.

Q. Did you tell him to tell Silva?

(Objected to by complainant as leading.)

A. I do not remember any conversation with Anthony in regard to the matter.

Q. Do you remember telling Anthony in Keeler to tell Silva that?

(Objected to as leading by counsel for complainant.)

A. I may have done so, but I do not remember.

Q. You are not certain whether you told him or not?

(Same objection by complainant.)

A. No, sir.

Q. At what place in Keeler did the converstion take place, which you have stated, between you and Mr. Yerington?

A. It was at the end of the railroad car, near the boarding-house, or near what is now the section-house belonging to the company. Mr. Yerington was about to get aboard of the cars, shook hands with me, and told me this at the time, just as he was getting aboard.

1094 Q. Who was present?

A. I do not know of any one who was present.

Q. If Mr. Forman had been there with you and Mr. Yerington, would you have known it?

A. If Mr. Forman had been there at that time?

Q. Yes, sir.

A. I would have known it, probably.

Q. Was he present right there at the end of that car when you and Mr. Yerington had that conversation?

A. No, sir.

Q. He was not?

A. No, sir.

Q. You are positive of that?

A. Yes, sir.

Cross-examination:

Mr. REDDY:

Q. Which way was Mr. Yerington going—going north?

A. Yes, sir.

Q. Towards Carson?

A. Yes, sir.

Q. Do you remember what time it was—what month?

A. No, I do not.

Q. Had you seen Mr. Yerington before on that day? You describe meeting him near the end of the car. Had you seen him on that day before?

A. I could not say positively. I do not think that I had.

Q. Had he just come down but a short time before?

A. I do not remember how long he had stayed in the town. I had been to the boarding-house and was coming from it at the time I met him.

Q. Did you notice if he came there with a buggy team and had it there.

1095 A. He might have had it there. I do not remember.

Q. Did you notice if he had a buggy team on the train?

A. No; I do not remember it.

Q. Do you remember seeing him the day before starting for Cerro Gordo in a buggy team?

A. I remember the circumstance of his coming here with Mr. Forman in a buggy team, but I cannot place the two together. They may have been together.

Q. It may have been on that occasion, for all you remember?

A. It may have been on that occasion. I do not remember.

Q. You speak about Mr. Yerington giving you a message for Silva. Be good enough to state the words, as near as you remember them.

A. He told me to tell this man Silva that he would give him ten thousand dollars for the mine.

Q. That is what you remember?

A. Yes, sir.

Q. Is that all that you remember?

A. We talked casually about the outlook of the country, and so on. He claimed that it would be some benefit to have something done; to have some one do something, and so on and so forth.

Q. Did he speak about the Elna furnace, and wanting ore for that?

A. I think not.

Q. May not this be the case, in view of the time that has intervened and all the circumstances, that Mr. Yerington said to you, "Tell Silva I will give him ten thousand dollars if I find everything as he represents it," or, "if these samples go as I think they
1096 will," or, "if my samples go as I think they will?" May that not have been added, "I will give ten thousand dollars if my samples go right," or, "if the assays turn out as I expect them to?"

A. No, sir.

Q. Is it not possible that may have been added to the statement?

A. It may be possible, but I do not remember it.

Q. If two men—I mean men you have no reason to doubt, respectable men, men of the same standing as yourself—should swear that that was said by Mr. Yerington, and heard it, are you so positive that he did not say it that you could contradict those two witnesses? I just want to get at the degree of certainty that exists in your mind upon that question. That is my purpose in putting this question. Would you be so positive and certain that something of that kind was said that you would contradict two witnesses; would you feel that you were that certain?

A. I would feel that I was that certain.

Q. What time in the day was it?

A. It was, I think, in the morning.

Q. Did the train leave in the morning at that time?

A. I do not remember whether it left in the morning.

Q. You say it may have been the occasion when Mr. Forman and Mr. Yerington had gone up to Cerro Gordo, or had returned from Darwin?

A. It may have been, but I do not remember the two in connection.

1097 Q. Is it not the fact that Mr. Yerington had his samples then with him, taken from the Stirling mine, and was going on to Carson to have them assayed?

A. That I do not know.

Q. That may be the case, for all you know?

A. It may have been the case.

Q. It is possible that Mr. Yerington may have added some kind of an addition to this offer of ten thousand dollars, and you have either forgotten it or not have heard it?

A. Such a thing might have been as a matter of course.

Q. He might have said it and you not have heard it, or he might possibly have added some little condition which you did not think important, and it not have impressed itself upon your mind at the time; naturally, an offer of ten thousand dollars would strike you and make an impression upon your mind, would it not?

A. Certainly.

Q. He might have added some condition, "if these assays are right," or some condition—I do not say what—that you did not hear, or which made no impression on your mind; is not that so?

A. He might, certainly.

Q. You are speaking now from recollection. You do not mean to say that your memory is so unerring, or that you are infallible in the matter of recollecting things that you never make mistakes? You do not mean that?

A. No, sir.

Q. You do not mean to say that you might not misunderstand or leave some words out of any conversation?

1098 A. I might, possibly.

Q. You cannot remember every conversation that you have had in the last five days and undertake to relate them exactly? I am not trying to fool with you or waste time; I simply want to get at the degree of memory that you have and your certainty about this matter.

A. I might.

Q. You have no recollection of transmitting that communication to Mr. Silva by any one except McKenzie?

A. No, sir.

Q. Is it probable that you could have sent that message by Mr. Anthony and have entirely forgotten it? Do you believe you have forgotten the entire fact of having talked with him and told him to communicate that to Silva, if you did make such a communication to him?

A. I might.

Q. How is it, if you had heard that from Mr. Yerington in the morning, and had that afternoon communicated it to Anthony and told him to carry the news to Silva, that you could entirely forget that circumstance?

A. I do not remember that circumstance.

Q. Is your memory so treacherous that, having heard it from Mr. Yerington in the morning, you could have told that to Mr. Anthony in the afternoon and then have entirely forgotten it? Is that possible?

A. I do not think it is possible.

Q. You do not think you told anything of the kind to Mr. Anthony; you have no reason now to think so?

1099 A. I do not remember having any conversation with Mr. Anthony. I may have had.

Q. I am now trying to get at your memory. Is it a fact that you may have sent that message by Mr. Anthony, which was so important that you now undertake to repeat the very words of Mr. Yerington, and yet have entirely forgotten doing so?

A. I certainly do not remember it.

Q. Then your memory is sometimes so treacherous that an entire conversation about an important matter, in executing a commission for another, would go entirely out of your memory. Is that so?

A. I do not think so.

Q. Did any such thing as that ever happen to you before—where you were asked to do a certain thing, and undertook to do it, and then would forget that you had done it or by what means you had executed the commission?

A. In small matters I have.

Q. Was that a small matter?

A. No, sir.

Q. You undertook to execute that commission for Mr. Yerington?

A. I did, sir.

Q. Now, you remember telling Mr. McKenzie about it?

A. Yes, sir.

Q. How long after you had received it from Mr. Yerington?

A. I could not tell exactly, but it was some days.

1100 Re-examination by Mr. MINER:

Q. Did you ever see Mr. Yerington and Mr. Forman in Keeler together?

A. I did.

Q. Was that subsequent to the time when Mr. Yerington gave you this commission to execute?

(Objected to by complainant as leading; the witness has already answered the question-in-chief and in cross-examination that he does not know whether it was on that occasion that they were there together or not. He says Mr. Forman was not present when the statement was made.)

A. Was which subsequent?

Q. He told you to tell Frank Silva that he would give ten thousand dollars for the mine. You say at another time you saw Mr. Yerington and Mr. Forman together; was it after Mr. Yerington had told you that that you saw Mr. Forman and Mr. Yerington in Keeler together?

A. It was before that.

Q. He told you that before you saw them there together?

A. Yes, sir.

Q. At the time you saw them together state any circumstances by which you know that it was at the time they had visited the Stirling mine.

(Objected to by complainant as not in re-examination and, further, that it is a fact not proven and contradicted by the witness.)

A. I met the two gentlemen after they returned from the Stirling mine.

1101 Q. Did you have any conversation with them?

A. I did.

Q. What was that?

A. Mr. Yerington had a conversation with me about the probable cost of hauling ore.

Q. Was anything said at that time about Mr. Yerington having on that occasion visited the mine?

(Objected to by complainant on the ground that it is leading and not in re-examination.)

A. Yes, sir.

Q. What was said?

A. He said, "We have some samples of the mine and we want to try them."

Q. Mr. Forman was present at that time?

A. Yes, sir.

Q. Was it previous to this last conversation that you had with Mr. Yerington that he told you he would give Silva ten thousand dollars for the mine and asked you to convey that intelligence to Silva?

(Objected to as not being re-examination and as leading and suggestive.)

A. It was.

Recross-examination by Mr. REDDY:

Q. How long do you pretend to say it was prior to the time that you saw Mr. Yerington and Mr. Forman together that Mr. Yerington gave you this message; do you mean to say it was before?

A. I see Mr. Yerington and Mr. Forman together several times.

1102 Q. You did?

A. Yes, sir.

Q. In Inyo county?

A. Yes, sir.

Q. How many times?

A. I once saw them going to Cerro Gordo, and afterwards when they came back.

Q. Do not you know that was all in one trip?

A. I do not remember.

Q. Do not you remember it was all on the same trip, and that Charles Forman never went to Keeler with Mr. Yerington but once in his life? I do not suppose you are trying to tell anything you do not believe. I believe you are sadly mistaken and I want to call your attention to facts which will enable you to remember. Do not you remember that Mr. Forman and Mr. Yerington came to Keeler, took a carriage, and went to Cerro Gordo?

A. Yes, sir.

Q. Remained at Cerro Gordo and came back to Keeler; and that Mr. Yerington, the next morning, with Mr. Forman, started out to-

wards Darwin in this same carriage, together, and that they went there and returned again to Keeler in a few days? Do you not remember in your testimony given before the committing magistrate, or else on the main trial, that you testified to these facts—that you did see them going to Cerro Gordo in a carriage, and that you saw them the next morning start in the direction of Darwin in this carriage, and afterwards saw them when they came back? I ask you if you are not satisfied that you never did see Mr. Yerington and Mr. Forman together but upon those occasions, which would
1103 make four occasions? I ask you if you remember any of that?

(Objected to by respondent as compound, complex, not clear, and that, as far as it relates to the testimony of this witness formerly given in the criminal case of The People of the State of California *vs.* Silva, if the evidence is in writing, it should be presented to the witness so that he may be allowed to examine it, and the statement should be shown to him.)

A. I saw them.

Q. You think those are the facts—that I have stated to you?

A. I do not remember the two trips in connection with each other.

Q. You thought it was two different trips?

A. Yes, sir.

Q. If Mr. Forman and Mr. Yerington both swear that they never were at Keeler, except but on that trip that they went to Cerro Gordo, and went on down taking a general look at the country, would that assist your memory any? Would you then say that they had been there on those two occasions together?

A. I would not.

Q. You are not so positive that you would contradict these two men about their movements in that respect?

A. No, sir.

Q. You remember having a conversation with Mr. Yerington in which he spoke about the samples?

A. Yes, sir.

Q. Do not you remember his saying at that time that, If
1104 these samples go so and so I will give Silva ten thousand dollars for the mine, or something to that effect?

A. I do not remember that; it may have been said.

Q. Do you not remember it was on the return of Mr. Yerington from Darwin with Mr. Forman that he told you he would give Silva ten thousand dollars for the mine, as you understood him?

A. No, sir.

(Recess to two o'clock p. m.)

Afternoon Session.

(Counsel and parties met pursuant to adjournment.)

THOMAS BOLAND recalled for further cross-examination.

Mr. REDDY:

Q. I will ask you if it is not the fact that you saw Mr. Forman and Mr. Yerington, in the month of January, 1884, leave Keeler in a buggy in the direction of Darwin?

A. I do not remember the exact time.

Q. The only time that you saw them go in that direction? You did see them on one occasion?

A. Yes, sir.

Q. And it was after they had returned from Cerro Gordo? They had been to Cerro Gordo the day before?

A. I believe so.

Q. You saw Mr. Yerington when he returned from Darwin?

A. Yes, sir.

Q. You saw him as he was stepping on the train leaving
1105 to go towards Carson?

A. Not on that occasion.

Q. Did you not see him as he was getting on the train at that time after coming back from Darwin?

A. I seen him at that time.

Q. You did see him at that time stepping on board the train as he was going away after that trip?

A. I do not know now as I saw him stepping aboard of the train.

Q. Just as he was stepping aboard the train?

A. There were two separate occasions that I saw him.

Q. In the month of January?

A. I do not know that it was in the month of January.

Q. Did you not testify on a former occasion, namely, on the trial of the case of The People *vs.* Frank Silva, tried in the superior court of Inyo county and in this court-room?

A. Yes, sir.

Q. Was not the following question put to you, and did you not give the following answer: "Q. Is it not your best recollection that these statements that you have testified to here," namely, the communication—the message—which he sent to Silva, "if made to you, was made to you in the month of January, 1884? A. I think it was." Did you so testify or not?

(Objected to by respondent on the ground that it must appear whether the statements were made orally or in writing, and, if in writing, the statement must be presented to the witness be-
1106 fore the question can be put to him and he be asked if he made such a statement, and that he then be allowed the op-

portunity to explain the same; that the evidence of the said criminal case was taken in short hand by the official reporter of this court, and the evidence of this witness is written out in long hand by said reporter and the same is on file in the county clerk's office of this county. We object to this evidence on the ground that the said writing has not been presented to the witness and, further, that it is immaterial, irrelevant, and incompetent.)

(Counsel for complainant states that counsel for respondent does not know whether the evidence was written out or not; he is simply making an assertion.)

A. I think I did.

Q. You stated it then as you recollected?

A. Yes, sir.

Q. You believe that still to be the fact, do you not?

A. No, sir.

Q. Do you believe that your testimony given on that occasion was untrue?

A. No; I do not.

Q. Then you still believe it to be true?

A. I believed it to be true at that time, to the best of my knowledge.

Q. Was not, on the occasion referred to, the following question put to you and did you not give it the following answer: "Q. Do you remember that upon the occasion of Yerington's visit to Keeler, in January, that Mr. Reilly was there, of the Slate range? 1107 Do you remember of seeing him there at the same time that Yerington was there? A. Yes." Did you give that answer?

(Same objections by respondent.)

A. Yes, sir.

Q. Do you remember Judge Conklin being there on that occasion?

(Objected to by respondent on the ground that it is indefinite, uncertain, unintelligible; that the occasion referred to is not stated. There are two interviews mentioned by the witness between him and Mr. Yerington, and the occasion mentioned in the question does not appear.)

A. Yes, sir.

Q. I speak of the occasion of Mr. Yerington's visit to Keeler in January, 1884. Do you remember Judge Conklin being there at that time?

A. Yes, sir.

Q. Do you remember that occasion distinctly?

A. I remember Judge Conklin being there distinctly. I do not remember the time.

Q. With Mr. Yerington?

A. At the same time.

Q. That was the time that Mr. Yerington went out to Darwin with Mr. Forman, was it not?

A. I do not remember it.

Q. I will ask you if you did not testify on the trial of the case of The People *vs.* Silva in this court-room, and if the following question was put to you and you gave the following answer: "Q. That was the time that Yerington went to Darwin; the next day he went to Darwin with Forman? A. Yes."

1108 (Objected to by respondent on the grounds that the evidence of the witness on the said criminal trial was taken down in short-hand and written out by the short-hand reporter and filed in the county clerk's office, and that the writing is not presented to the witness so that he may be allowed to explain the same, and it is immaterial, irrelevant, and incompetent if this evidence is offered for the purpose of impeaching the witness.)

A. No, sir; I do not remember that.

Q. Will you swear you did not give that testimony?

(Same objections by respondent.)

A. I do not remember that question at all.

Q. I will ask you if upon the trial last referred to the following question was not put to you and if you did not give the following answer: "Q. When was this statement made to you; in what month"—referring to Yerington's message to Silva through you. Was that question put to you?

(Same objections by respondent.)

A. Yes, sir.

Q. "I cannot say what month it was in. I think it was in January." Did you give that answer?

(Same objections by respondent.)

A. Yes, sir.

Q. Was not the following question put to you: "Q. Might it not have been later than January?" and did you not answer, "It might?"

1109 (Same objections by respondent.)

A. I do not remember that.

Q. Was not this question put to you on that occasion: "Q. Was it earlier than January?" and did you not answer, "I cannot say?"

(Same objections by respondent.)

A. I might have done so.

Q. It was true, of course, if you said so. You understood it to be true?

(Same objections by respondent.)

A. To the best of my knowledge.

Q. I will ask you if the following question was not put to you: "Q. Have you any idea when it was, within a range of two or three months?" and did you not give the following answer: "My idea was that it was in January."

(Same objections by respondent.)

A. Yes, sir.

Q. I will ask you if the following question was not put to you: "Q. Is it not your impression that was at the time he went to Cerro Gordo?"—meaning the time he gave this message to you. "A. I think it was." Did you give such an answer?

(Same objections by respondent.)

A. Yes, sir.

Q. Was the following question put to you: "Q. Do you know that he was there more than once? A. I do not know." Did you give that answer?

(Same objections by respondent.)

1110 A. Yes, sir.

Q. Was the following question put to you and did you give the following answer: "Q. Do you remember of ever having seen him at any time in January at Keeler, except when you understood that he went to Cerro Gordo? A. I do not." Did you give that answer?

(Same objections by respondent.)

A. Yes, sir.

Q. Was the following question put to you: "Q. Yerington went in his own team to Cerro Gordo?" and did you give this answer, "A. Yes?"

(Same objections by respondent.)

A. Yes, sir.

Q. Was the following question put to you: "Q. When was it that Mr. Yerington made these statements to you; was it as he was going on the train north?"—having reference to the message to Silva—and did you give this answer, "A. Yes?"

(Same objections by respondent.)

A. Yes, sir.

Q. Was the following question put to you and did you give the following answer: "Q. Now, did you see him going to Cerro Gordo? You say he started in the direction of Darwin. Did you see Yerington on any other occasion in the month of January at that place? A. I do not remember; I cannot say that I did or not."

(Same objections by respondent.)

A. That is the answer I gave.

1111 Q. Was the following question put to you: "Q. Have you any recollection of any other occasion?" and did you give the following answer: "A. No, sir?"

A. I do not remember that one.

Q. Was the following question put to you and did you give the following answer: "Q. It is your best recollection that it was upon that occasion, because you have no recollection of any other occasion; is it not your best recollection that it is upon that occasion that he made that statement? A. That is my recollection?"

(Same objections by respondent.)

A. I would like to see that evidence before I answer that question.

Q. You can read it right here.

(Objected to by respondent on the ground that the paper from which counsel for complainant is reading does not appear to be the evidence of the witness as taken down.

Counsel for complainant states that he will prove the paper by the short-hand reporter when the proper time comes.

Counsel for respondent further objects on the ground that the evidence, if in writing, has not first been shown to the witness, and that he has not been allowed an opportunity to examine the same. The evidence in that case was taken down by a short-hand reporter,

1112 who is now present, and the evidence has not been presented to witness as taken down by said short-hand reporter or as written out in long hand by said reporter. If said evidence was written out in long hand, and if this evidence is offered in evidence for the purpose of impeaching the witness, if in writing, the statement must — first shown to the witness before any questions can be put to him respecting it, and he must be allowed an opportunity to examine the same. If this evidence is introduced for some other purpose besides that of impeaching the witness it is irrelevant, immaterial, and incompetent and not tending to prove any of the issues in this case.)

A. I do not remember it.

Q. Will you say that you did not so testify?

(Same objections by respondent.)

A. No, sir.

Q. And if you did so testify, was it true?

(Same objections by respondent.)

A. I do not remember it.

Q. If you did so testify, was it the fact—was it true?

(Same objections by respondent.)

A. If I did so testify, I suppose I must have testified it for the truth.

Q. Then it was your recollection at that time, if you did so testify?

(Same objections by respondent.)

A. If I did so testify at that time; yes, sir.

Q. Was the following question put to you with reference to

1113 Mr. Yerington, and did you give the following answer: "Q. Who went with him from your place in his buggy up to Cerro Gordo? You say you saw him start. Was not Charles Formen one of the men who went with Yerington in the buggy going to Cerro Gordo? A. Yes?"

(Same objections by respondent.)

A. Yes, sir.

Q. Was not the following question put to you, and did not you give the following answer: "Q. You have stated that Mr. Yerington, after coming from Darwin, took the train going north; it must be when he was boarding the train on that occasion that he made these statements to you, must it not? A. I think that was the time." Did you so testify?

(Same objections by respondent, and further that it does not appear in the question to what statements reference is made.)

Mr. REDDY:

Q. I refer to the message from Yerington to you, to be delivered to Silva.

(Objected to by respondent on the ground that it does not appear from the question asked on the former trial that those were the statements referred to in the former question.)

A. I do not understand that question.

Q. I will put it to you again: Was not the following question put to you: "Q. You have stated that Mr. Yerington, after coming from Darwin, took the train going north; it must be when he was boarding the train upon that occasion that he made these state-
1114 ments, must it not? A. I think that was the time." Did you give that answer?

A. I think I did.

Q. That was as you understood it, of course?

(Same objections by respondent.)

A. Yes, sir.

Q. Was the following question put to you on the trial mentioned: "Q. Mr. Yerington testified on page 5 of his testimony that on the 16th of January, 1884, he went over to Darwin, accompanied by Mr. Forman. Do you mean to say that he was incorrect in that?" Did you give the following answer: "A. No?"

(Same objections by respondent.)

A. I recollect it that way.

Q. Was the following question put to you and did you give the following answer: "Q. Does that help you to fix the time? A. That was the time, I suppose." Did you give that answer to that question?

(Same objections by respondent.)

A. I do not remember that question.

Q. If you did so testify, was it true; was that your idea of the fact?

A. I suppose it must have been, if I testified it is.

Q. Can you say whether you did or not testify in that way?

A. No; I am not prepared to say.

Q. Have you given the whole of Mr. Yerington's statement which he requested you to communicate to Mr. Silva?

A. Did I deliver it all?

Q. Did you state here to Mr. Miner, and have you stated to
1115 me when I was questioning you, the whole of the message sent by Mr. Yerington to Silva?

A. Yes, sir.

Q. Be kind enough to repeat the entire message which Mr. Yerington requested you to repeat to Mr. Silva.

A. The message was that he would give Silva ten thousand dollars for the mine.

Q. Is that the whole of the message?

A. That is all that I remember.

Q. That is what I am getting at. Was that the entire message?

A. Yes; that was the entire message.

Q. That is every word that he said to you on that occasion?

A. Not every word he said to me; that was his message.

Q. Is that every word of the message that he desired you to communicate to Silva?

A. As far as I can remember it.

Q. That is what we want to know; whether you are positive that you have now given us every word of the message delivered to you by Mr. Yerington for Silva?

A. I am not positive that I have given every word.

Q. Are you positive, as far as you have related it, that you have given the exact words used by Mr. Yerington?

A. I am positive I have given the substance of it.

Q. I am asking you now about the words. Are you sure that you have given us, as far as you have related it, the words used by Mr. Yerington on that occasion?

(Objected to by respondent on the ground that the witness has fully and fairly answered the question; he has stated he has
1116 given the substance of the message, which is all that is required. The witness does not pretend to give each word—word for word—which is an impossibility, and takes up more time than is necessary in asking the same question over and over again; and, further, evidence on this subject is immaterial, irrelevant, and incompetent.)

A. I think I have.

Q. The exact words?

A. I will not say the exact words.

Q. Then you are giving us now what you understood—your construction of what he said—instead of giving us his exact words?

(Objected to on the ground that the witness has said nothing about his construction or his understanding, but has fully and fairly given the substance of what was said, and that it is a useless repetition of the evidence heretofore given, and any more evidence is immaterial, irrelevant, and incompetent.)

A. I delivered the message as I understood it.

Q. And when you undertook to tell us the message which Mr. Yerington gave you you did not mean to use Mr. Yerington's words, but what you understood from them; is not that so?

(Objected to by respondent, as it assumes that the witness gives his understanding of what was said, and the witness testifies that he delivered the message as given to him, in substance; that the examination has proceeded far enough on this line, and further examination on the same is taking up more time than necessary, and any further evidence on the subject is irrelevant, immaterial, and incompetent.)

1117

A. The message, as delivered, were Mr. Yerington's words, I think.

Q. What do you mean by the substance—what you understood by the words used?

(Objected to as irrelevant, immaterial, and incompetent. The question has been asked and repeatedly answered; the witness has stated that he gave what Mr. Yerington said, or the substance, which is all that can be required of any witness testifying to a conversation, and any further examination is taking up an unnecessary length of time and is irrelevant, immaterial, and incompetent.)

A. Yes, sir.

Q. And you are not positive that you now recollect all of the words used, are you?

A. No, sir.

Q. You could not recollect, perhaps, but very few of the words used by Mr. Yerington, could you?

A. I could not recall the conversation.

Q. There might have been a great many more words used than those you have any recollection of now?

A. There might have been.

Re-examination:

Mr. MINER:

Q. Was the short-hand reporter present during the trial of the case of The People *vs.* Silva at the time you testified in that criminal case, which has been referred to in your cross-examination?

1118

A. Mr. Harris was present.

Q. Was he the short-hand reporter?

A. I cannot say; I suppose he was.

Q. Is Mr. Harris present in this room now?

A. Yes, sir.

Q. Is that the gentleman sitting to the right of counsel for complainant?

A. That is the gentleman.

Q. Was not your evidence taken down in short-hand on that rial by that reporter?

A. I think so.

Q. Have the notes of that evidence been presented to you here in this court-room during your cross-examination on this matter?

A. No, sir.

Q. Has any transcript or long-hand notes, purporting to have been written out from the said short-hand notes, been presented to you during your cross-examination in this matter?

A. No, sir.

Q. Then, if any questions, such as are asked you by counsel, and the answers alleged to have been given by you, as stated by counsel in cross-examination, were given to you and answered by you on the trial of said Silva in said criminal action, has any writing been presented to you containing said questions and answers during your cross-examination in this court-room?

A. No, sir.

Q. Since we adjourned at noon have you looked at any paper purporting to be the evidence given by you in the criminal trial of The People *vs.* Frank Silva?

A. Yes, sir.

Q. Why did you go and look at that?

—. ——.

1119 Q. By whom?

A. By counsel.

Q. Which counsel?

A. Mr. Reddy.

Q. Where did you find that paper?

A. In the clerk's office.

Q. What was it?

A. Written reports of the superior court, I suppose.

Q. Who gave it to you?

A. The clerk of the superior court of Inyo county, Mr. Hunter.

Q. Was that supposed to be a transcript of your evidence given on the criminal trial of Frank Silva?

A. I do not know that I could say.

Q. You do not know whether it was a correct transcript of your evidence or not?

A. I suppose it was.

Q. Do you know whether it was or not?

A. No, sir.

Q. Do you know who wrote it down?

A. No, sir.

Q. Do you know when it was written down?

A. No, sir.

Q. Did you read it all?

A. I did not have time to read it all.

Q. You read a portion of what was supposed to be the evidence given by you in that criminal case?

A. Yes, sir.

Q. Just a portion of it?

A. Yes, sir.

Q. Some one told you it was your evidence given on the criminal trial?

A. Yes, sir.

Q. Will you swear that was your evidence given on the criminal trial?

A. I could not swear that it was.

Q. You do not know whether it is a correct transcript of your evidence or not?

A. I have no way of knowing that.

Q. Was there anything in that that you read that you would like to explain at the present time?

1120 A. No; not that I know of.

Q. Did you read anything in that that you thought was not a correct statement of your evidence?

A. I did not.

Q. How much of it had you read?

A. I do not know. I did not finish it. I do not know how long it was.

Q. Did you get as far as the conversation with Mr. Yerington at the time he and Mr. Forman were returning from their visit to the Stirling mine?

A. I think I struck that in several places.

Q. Did that evidence show that you had had a conversation with Mr. Yerington, being the same conversation which you have testified to in this case when he spoke to you about the cost of reducing ores and hauling ores, etc., when Mr. Forman was present?

A. I could not say, unless I read it.

Q. You do not know whether you testified to that conversation in the criminal trial or not?

(Objected to by complainant as leading.)

A. No, sir.

Q. Have you not testified to two conversations with Mr. Yerington at two separate times?

A. Yes, sir.

Q. One of those conversations was when he offered the ten thousand dollars, was it not?

(Objected to by complainant as not being in re-examination and as leading.)

A. Yes, sir.

Q. Was that the first conversation you had with Mr. Yerington?

A. Yes, sir.

1121 Q. How long after that did you have the second conversation with him, about?

A. I could not say as to time.

Q. Was it some time after?

(Same objection by complainant.)

A. Yes, sir.

Q. What was the second conversation about and who was present at it?

(Same objection by complainant.)

A. The second conversation was in regard to transportation of ores.

Q. Who was present at that conversation?

(Objected to as not being in re-examination and as immaterial and irrelevant.)

A. Mr. Yerington and Mr. Forman.

Q. Was Mr. Forman present at the first conversation?
A. No, sir.
Q. Did you, on the criminal trial, testify to anything in regard to the second conversation when Mr. Yerington spoke about the transportation of the ore?

(Objected to as not being in re-examination and as cross-examination of his own witness.)

A. I would not like to say positively, unless I read the balance of the testimony.
Q. At the time of this second conversation did you see any samples Mr. Yerington had?

(Objected to by complainant as not being re-examination.)

A. No, sir.
Q. What did he say to you about samples?

1122 (Objected to by complainant as leading and not being in re-examination, and assuming a fact that something was said by Mr. Yerington about samples.)

A. I do not remember, except he said he had samples.
Q. Samples of what—wool, corn, grain, or what?
A. I suppose of ore.
Q. From what place; did he say from what place?

(Objected to by complainant as immaterial, irrelevant, not in re-examination, and leading.)

A. I cannot recollect; my impression was from the mine.

(Counsel for complainant moves to strike out the answer on the ground that it is not responsive to the question.)

Q. From what mine?
A. From the Stirling mine.
Q. At that second conversation did Mr. Yerington say anything to you about conveying your message to Frank Silva?

(Objected to by complainant as not being in re-examination.)

A. No, sir.

Recross-examination by Mr. REDDY:

Q. You say you had two conversations?
A. Yes, sir.
Q. One was concerning the hauling of ore?
A. Yes, sir.
Q. From what mine?
A. From the Silva mine.
Q. Now, do you know what time the first conversation took place?
A. No; I cannot recall the time.

Q. Do you know how far distant it was in point of time from the second?

A. No, sir.

1123 Q. You saw Mr. Yerington when he came from Carson with his team?

A. Yes, sir.

Q. You saw him before he went to Cerro Gordo with Mr. Forman and others?

A. Yes, sir.

Q. He went to Cerro Gordo and returned. Did you see him then and have any talk with him on either of those occasions?

A. Yes; I did.

Q. And then you saw him after he returned from Darwin with Mr. Forman, did you not?

A. Yes, sir.

Q. There were three occasions when you met and conversed with Mr. Yerington before he went to Cerro Gordo, after getting off the cars. He returned from Cerro Gordo, and, before starting for Darwin, you had another conversation with him, and when he returned from Darwin you had still another. These are the three different occasions on which you met Mr. Yerington in the month of January, 1884; is not that the fact?

A. I understand that was all on one occasion.

Q. Have you any recollection whatever of seeing Mr. Yerington at Keeler upon any occasion during the month of January, 1884, except upon those three occasions?

A. No, sir.

Q. Those two conversations must have taken place during those three interviews that you had with Mr. Yerington in 1884; is not that so?

A. Not during those three interviews.

Q. You have said that you have not the slightest recollection of seeing Mr Yerington in Keeler, except on those three occasions, during the month of January, 1884; is not that so?

A. As I understand this, this is one occasion.

Q. Those three different occasions? If you see a man on

1124 Monday and again on Saturday and again on Friday, do you call that one occasion?

A. If he made a trip down there I would call it one occasion.

Q. You have testified before this that you had no recollection of seeing Mr. Yerington during the month of 1884 at Keeler except on those three occasions which I have named. You have said also that it was in the month of January, according to your best recollection, that you had all these conversations with Mr. Yerington. That is so, is it not?

(Objected to by respondent on the ground that it assumes several facts not in evidence; therefore the question is misleading. It assumes that the witness saw Mr. Yerington in the month of January, 1884, on three different occasions in that month. The witness has fully answered heretofore on this matter, and any further evidence is irrelevant, immaterial, and incompetent.)

A. Could I see the manuscript in regard to that before answering?

Q. I simply ask you what is your recollection now.

A. I do not remember that.

Q. Do not you know whether it was all in the month of January or not? Have not you any independent recollection now of what you are talking about as to the time when these things took place?

A. My recollection was that it was in the month of January.

Q. You have no recollection of seeing Mr. Yerington at any time in the month of January except when he was starting to Cerro
1125 Gordo, when he returned from Cerro Gordo, when he started for Darwin, and when he returned from Dawin, four occasions?

A. Those were the times.

Q. He went up to Cerro Gordo on one day and returned the next?

(Objected to by respondent on the ground that the same questions have been asked the witness and answered; it is taking up time uselessly, and any further evidence is accumulative.)

A. I do not remember whether he returned the same day or the next.

Q. The two occasions to which you have alluded took place in those four interviews. You had four interviews. You saw him when he stated for Cerro Gordo, when he returned, when he started for Darwin, and when he returned, making four interviews. The two conversations took place in those interviews, did they not?

A. I cannot say that they did.

Q. You say it was in January, and you had no other interview with Mr. Yerington in January. It must be in some one of those interviews that the first conversation took place. Is not that so?

A. I had frequent interviews with Mr. Yerington before that.

Q. You have already said that these conversations occurred in January, to the best of your recollection. You do not want to beat your recollection, do you, and destroy that?

A. No, sir.

Q. Then if you believe that these two conversations, the first and second, took place in January it must have been in some one of those interviews that each one of them took place?

1126 A. If they took place then.

Q. It is your best recollection that that is the fact, is it not; have not you so stated it from first to last up to this time?

A. It is my best recollection.

Q. If the first conversation was not when Mr. Yerington was on his way to Cerro Gordo or just before starting to Darwin it must have been when he returned; is not that so?

A. It might have been when he returned.

Q. As I understand you, it was in the first conversation you had with him that he told you he would give ten thousand dollars for the mine and told you to tell Silva that, or was it in the second conversation?

A. It was in the first conversation that he had with me about the matter.

Q. If the first conversation took place before Mr. Yerington went to Darwin why, then, the fact is that he asked you to send a message to Silva that he would give him ten thousand dollars for the mine, when Mr. Yerington himself was then on his way to look at the mine for the purpose of inspecting it in company with Mr. Forman; is not that true?

A. That is not the way I understand it.

Q. If the conversation which you have related took place in some one of the four interviews which you have named in January, 1884, it must be either when he was on his way to Darwin or else when he came back from Darwin, after having seen the mine; is not that so?

A. I do not know if he had seen the mine then or not.

Q. It was either after he returned from Darwin or when he was on his way to Darwin; is not that so?

1127 A. He was in Darwin several times, to my knowledge.

Q. I am speaking of the month of January, 1884; was not your first conversation in January, either when Mr. Yerington was on his way to Darwin or else when he had returned from Darwin?

A. I cannot swear to that positively.

Q. What is your best recollection?

A. It was when he was coming back and going north.

Q. It must have been after he returned from Darwin, because he did go from Cerro Goro to Darwin, and he was not going north then; he was going south when he went to Darwin and returned; then he took the train and went north to Carson. You say it was about when he was about to board the train that you had this conversation with him; does not that enable you to say to the best of your judgment that it was after he had returned from Darwin?

(Objected to by respondent as leading and assumes Mr. Yerington was never in Keeler except in going to Darwin or coming from Darwin; it may appear he went to Keeler and no further than Keeler and returned again, nor does the witness attempt to state that it was in the month of January that he had the first conversation with Mr. Yerington, and also objected to as irrelevant, immaterial, and incompetent.)

A. I do not remember.

Q. It may have been after his return or may have been when he was going out; you cannot say which?

A. He was going north when we had the conversation.

1128 Q. It must have been after he returned from Darwin in that case, taking these January visits to be the only visits on which you had talked with him about that matter; is not that so?

A. If that was the only one, yes.

Q. You do not know of seeing him at any other times during that month?

A. I am not positive.

Q. You have already said you had no recollection of seeing him at any other times than those named; did you not say that?
A. Yes, sir.

Re-examination:

By Mr. MINER:

Q. Do I understand you to state that it was in the month of January when you had this first conversation with Mr. Yerington in which he told you that he would give Silva ten thousand dollars for the mine; are you positive that it was in the month of January?

(Objected to by complainant as not being in re-examination and as leading.)

A. I believe I testified it was to the best of my knowledge.
Q. I want to know if you are positive about the month.

(Objected to by complainant as leading and not in re-examination.)

A. No, sir.
Q. It may have been in December, 1883, may it not?
A. It might have been.

Recross-examination:

By Mr. REDDY:

Q. The whole business might have transpired in December, for all you know; everything you testify to?
A. I am not positive in regard to the time.
1129 Q. But what you mean to say is that to the best of your recollection these matters transpired in January, 1884; that is all you are able to say?
A. That is what I testified.
Q. That is the best of your recollection?
A. Yes, sir.
(Signed) THOMAS BOLAND.

(Endorsed:) Opened and refiled August 9th, 1886. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

1130 J. C. EDDY, a witness for respondent, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.
A. My name is J. C. Eddy; age, 49; residence, Darwin; occupation, miner.
Q. How long have you lived in Inyo county, California?
A. About seventeen years.
Q. Do you know the respondent in this action, Frank Silva?
A. Yes, sir.
Q. How long have you known him?

A. I have known him, I think, about all the time I have been in the county, or very nearly it, anyway.

Q. At what place in the county have you known him?

A. At Cerro Gordo and Darwin.

Q. How long did you know Silva in Cerro Gordo and how long did you know him in Darwin?

A. To the best of my knowledge I knew him in Cerro Gordo first in 1868 and up from that time in Cerro Gordo until 1874. Since then the biggest portion of the time I have known him in Darwin.

Q. Do you know what Silva's general reputation was for truth, honesty, and integrity in Cerro Gordo from 1868 to 1874 or during the time that you knew him at that place?

(Objected to by complainant as immaterial, irrelevant, and the time too remote.)

1131 A. Yes, sir.

Q. What was his general reputation for truth, honesty, and integrity in Cerro Gordo during the time that you knew him?

(Objected to by complainant as immaterial and irrelevant and assuming that the respondent was known to the general public at Cerro Gordo, and that he had there acquired a reputation.)

A. His reputation was good, as far as I know.

Q. What was his general reputation, not what you personally knew, about it at that time in the respects mentioned?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. Good, so far as I know.

Q. Every man has a general reputation in the community in which he resides?

(Objected to by complainant as immaterial, incompetent, irrelevant, leading, and suggestive and putting words into the mouth of the witness, and as argumentative; further, on the ground that every man's reputation is not in question; only one man's reputation is in question, and that is Silva.)

A. I think so.

Q. Do you know what I mean when I ask you if you are acquainted with Silva's general reputation and character?

A. Yes, sir.

Q. Now, sir, what do I mean by that?

1132 A. I suppose that you mean that the man's reputation is what the majority of the people in the place think of him and speak of him.

Q. What was about the average yearly population of Cerro Gordo from the year 1868 to the year 1874?

(Objected to by complainant on the ground that it is immaterial, irrelevant, and incompetent and that the "yearly population" is

incomprehensible; that it is impossible to tell whether it means the increase of population or whether it includes the entire population from year to year.)

A. I could not say for positive, for a portion of the time the population was small and at other times it was larger.

Q. Give it approximately.

A. There was one time there when there was six or seven hundred people, and at other times when there were not over forty or fifty.

Q. Between 1868 and 1874 there would be from six to seven hundred people down to forty or fifty in any one year?

A. Yes. I should judge probably in 1871 in and around belonging to the place there were six hundred people.

Q. What did the population of Darwin, Inyo county, from the year 1874 to the year 1884 average, during that period?

(Objected to by complainant as immaterial and irrelevant.)

A. It is a pretty hard question to answer.

Q. Per year or about.

1133 A. That is pretty hard to answer. There was quite a large population there for a few years. I do not know the amount of population.

Q. What was it in the year 1874?

A. There was not a great quantity.

Q. About how many?

A. I could not tell. I did not get there until Christmas Day in 1874.

Q. Has there been, from 1874 to 1884, as many as two thousand people in Darwin at any time?

A. I think not.

Q. Have there been as many as one thousand people at any one time in Darwin from 1874 to 1884?

A. I do not think so; not in the town of Darwin.

Q. Then Darwin is a small mining town, and has been during that time?

(Objected to by complainant as irrelevant, immaterial, and leading.)

A. Yes, sir.

Q. In the best days of Darwin, during its palmiest days, from the years 1874 to 1884, about how many people were there in the town—that is, the greatest number of people at any one time?

A. From six to eight hundred.

Q. What was the population of Darwin about January, 1884?

(Objected to as immaterial and irrelevant.)

A. Probably thirty people.

Q. From 1874 to February 15, 1884, are you acquainted with the general reputation and general character which Frank Silva had or

bore in Darwin, or in the community about Darwin in which
1134 he resided during the time mentioned, for truth, honesty, and integrity?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. Yes, sir.

Q. What was his general reputation and general character for truth, honesty, and integrity in the community at Darwin from 1874 to the 15th of February, 1884?

(Same objections by complainant.)

A. It is good.

Q. Are you also a merchant as well as a miner?

A. Yes, sir.

Q. How long have you been in merchandising and at what places?

A. I have been merchandising at different places for twenty-five years.

Q. And in Inyo county for how long?

A. About ten years. I have been merchandising since October, 1875, in Darwin nearly all the time.

Q. During all that time have you been engaged in any business in connection with merchandising or outside of merchandising?

A. I have been connected with mining, teaming, and hauling.

Q. Have you been connected with milling and smelting ores, too?

A. Some.

Q. Are you interested at present in milling, smelting, and working ores?

A. I am interested in milling at present.

Q. How long have you been acquainted with mines and mining for ores?

A. About thirty-three years.

1135 Q. At what place in the United States or any other place?

A. Almost all over the States of California, Nevada, Mexico, and Chili.

Q. Anywhere else?

A. No, sir.

Q. In what way have you been connected with mining and milling ores? State in what capacity you have acted.

A. I have been at different capacities—working for day's pay, working for myself, and engaged under other people.

Q. Have you had much experience in working or dealing in ores about the mining district of Darwin, in this county?

A. I have had some.

Q. How much experience have you had?

A. I had a little, off and on, for several years; almost steady at it in a small capacity.

Q. Are you acquainted with the ores of that district around Darwin?

A. I am fairly acquainted with them. I have seen them often enough.

Q. Have you dealt in ores, more or less, in that region?
A. Yes, sir.
Q. Do you know what galena ore is when you see it?
A. Yes; I can tell what galena is when I see it.
Q. Do you know what the carbonates are when you see them?
A. I know what carbonates are that are around Darwin.
Q. Look at these exhibits of the respondent, marked "G," "H," "I," "J," "K," "L," and "M," and tell me the result of your observations as to what they consist of.

A. Exhibit G is carbonate ore mixed with iron.

1136 Q. You say carbonate ore. Do you mean carbonate ore as contradistinguished from galena ore?

A. Certainly.
Q. Is that a first-class ore or not? Can you tell by looking at it and handling it?
A. I do not call it first-class ore. I call it fair ore for that district.
Q. Provided it came from Darwin, what would you say about that class of ore from the New Coso mining district?

(Objected to on the ground that the grade of the ore and the value of the ore can be determined to a certainty by assay.)

A. I should say it is fair carbonate ore.
Q. Now take Exhibit H. What kind of ore is that?
A. Exhibit H is carbonate lead ore.
Q. Is it the same character as Exhibit G?
A. Not entirely the same character.
Q. What is the difference?
A. G has got more iron in it. There is a possibility that H has a little more lead in it than G. I cannot judge by looking at it how much it contains.
Q. What class of ore would you call that?

(Objected to by complainant on the ground that it is not a case for opinion evidence; its class can be ascertained by assay or analysis.)

A. There is one piece I would call a great deal better than the other. One piece I would call pretty fair quality and the other I would not.

Q. Which piece of Exhibit H would you call the best class

1137 of ore?

A. The small piece.
Q. Which is the darkest piece—the large piece or the small one?

(Objected to by complainant on the ground that it will show for itself.)

A. The smallest piece is the darkest.
Q. As a practical miner and a man experienced in mines, would you call this, in a mining sense, ore or waste?

(Objected to on the ground that it is impossible for any man to tell the value of that ore, and whether it is waste or ore depends

upon its value; that it is not a case for opinion evidence; its value can be ascertained by assay, and it is therefore incompetent.)

A. It is ore.

Q. If you were working in a mine which contains such ore as that of which this is a sample, and you were looking for carbonate ores, would you place this aside as ore or throw it away as waste?

A. I probably would test the ores and find out the value, and would assort them according to the grade.

Q. If you were working in a mine as a practical miner, looking for lead ore, and you should find ore in it of the same kind as Exhibit G, the large sample which you have examined, would you place that on one side as ore or cast it aside as waste?

A. I should call it ore.

Q. Now look at Exhibit I. What is Exhibit I?

A. It is ore.

Q. What kind of ore?

A. Carbonate ore mixed with quartz.

1138 Q. Is this sample different in any way from the other two samples, G and H?

A. Yes, sir.

Q. In what respect does it differ?

A. It differs in the amount of lead that is in it; it differs in the working portion of it; it is a harder material to work and it may probably be richer than the other or may not.

Q. Is this still a class of lead ore?

(Objected to by complainant as leading.)

A. That is a certain class of lead ore.

Q. What class would you place this, starting with lead ores as a genus, amongst lead ores?

A. I should have to test it first before I could say positively.

Q. Would you class it as galena or is it carbonate?

(Same objection by complainant.)

A. I would class it as a carbonate.

Q. As a practical mining man and working in a mine for lead ore would you throw this aside as waste, or would you put it on one side as ore?

A. I would put it aside as ore. I probably might lay it on one side on a pile by itself until I determined what was in it.

Q. What do you mean by that—as to its value or as to what elements it contained?

A. As to its value.

Q. You would find out what it contained by practical working and assaying?

A. The general rule is to find out by assay before you 1139 work it.

Q. It is usual, then, to assay any ores which you obtain in a mine before you work them to see what the value is; is not that so?

A. You cannot determine their value until you do.

Q. Now, please examine J; what do you call that?

A. I call it a portion of carbonate ore and a portion lime; iron and magnesia and carbonate and other materials mixed with it.

Q. As a practical miner working in a mine for ores of this kind—lead ores—would you throw that aside as waste, or would you preserve it as ore?

A. I think I would take off a portion of this and put the balance of it for ore.

Q. Which portion would you take off?

A. By the look of it I would take off this white side.

Q. What do you call that?

A. I think the biggest portion of that white side is lime.

Q. This white side is lime?

A. There may be some little iron in it; not much.

Q. What does the bulk of the sample—the brown, yellow, and black—contain?

A. The bulk of it is carbonate ore; there is quite a portion of it there that is pretty near waste.

Q. Take Exhibits K, L, and M and tell me what they are.

A. Exhibit L is a good class of carbonate ore—that is, as
1140 far as lead is concerned; how much silver there is I could not tell you by looking at it. I might make a mere calculation.

Q. Give us a calculation of about how much lead it would go.

A. This will go from 45 to 50 per cent. lead.

(Counsel for complainant moves to strike out the answer as incompetent, because it can be exactly ascertained by assay and is not a case of opinion evidence.)

Q. Can you tell what it would go in silver, if anything?

(Objected to by complainant because it is not a case for opinion evidence; the quantity of silver can be ascertained by assay.)

A. Exhibit K is also carbonate ore. Exhibit M is partly carbonate ore mixed with iron and ore material.

Q. Do you know anything about assaying?

A. I am not a practical assayer. I do a little for myself.

Q. What do you mean by not being practical?

A. I mean to say that I have not had sufficient experience in it to say I am correct.

Q. How long have you been assaying?

A. I have done a little of it for some years, but not a great deal. In fact, I have not made any assays for any person on the outside. I have tested my own ores. If I thought I was incorrect I have sent them to San Francisco to test over again to see how near I came to it.

Q. How did the assays made by other parties which you had made for the purpose of comparing with your assays com-
1141 pare with yours?

(Objected to by complainant on the ground that the other assayers may have been poorer with the witness, and the comparison throws

no light upon the ability of the witness to assay. The testimony is therefore incompetent.)

A. As far as my experience has been I very seldom find two assayers come exactly alike. I find the very best we have on the coast differ on the same pulp and the same ores.

Q. You have made assays frequently?

A. Yes, sir.

Q. Did you ever compare the assays made by you of a certain kind of rock with the assays made by other assayers of the same kind of rock taken from the same mine?

(Same objections by complainant.)

A. Yes; I have made comparisons.

Q. Now state with whose assays you have compared your own.

(Objected to as irrelevant and immaterial.)

A. Different parties.

Q. Name some of them.

(Same objections by complainant.)

A. Thomas Price, W. D. Johnson, and different ones around this country and Virginia City.

Q. Did you ever compare any with the Selby Smelting Works?

(Same objections by complainant.)

A. Yes; and I got others to compare with them, too. I found out that we all differed.

Q. Was the difference a material difference?

1142 A. As far as I know, the material was the same, or ought to be.

Q. Did you differ widely or very little?

A. Sometimes we would differ widely, as much as sixteen to twenty ounces.

Q. Was that owing to the samples you had being different or was it because some one made a mistake in the assay?

(Objected to as immaterial and irrelevant, and if the material was different there was no comparison.)

A. I could not answer that because the material was supposed to be the same. I could not say whether they had the same; after it left my hand I could not say how it was.

Q. Whose assay was taken when there was such a difference; was yours taken or that of the other assayers?

(Objected to by complainant as incompetent, immaterial, and irrelevant.)

A. In general, the man that buys the ore takes his own assay.

Q. In the case where you compared assays were you the buyer or seller?

A. Sometimes I would be the buyer and sometimes the seller.

Q. It depends upon whether a man is a buyer or seller?

(Same objections by complainant.)

A. It all depends on the position, whether he is there to see his ore sampled and see it assayed or whether he has got to send it five or six hundred miles.

Q. How long have you been engaged in assaying—since you first commenced to the present time?

1143 (Objected to as irrelevant and immaterial; the witness has stated he has not had sufficient experience to qualify him for making a correct assay.)

A. As I told you before, I have never made any assays.

Q. How long have you been engaged in assaying, since you first commenced to the present time?

A. That is a question I could hardly answer; it may be, probably, twelve or thirteen years or it may be less; I could not say when I did first start to do a little of it; I could not tell you the date.

Q. It is so long ago you have forgotten?

A. No; it is not so long ago, but I do not remember the date or year when I first started to do a little; in fact, I never did do a great quantity, only for my own satisfaction.

Q. You do it yet?

A. A little.

Q. You have a laboratory?

A. Yes, sir.

Q. And an assaying outfit?

A. Yes, sir.

Q. When you say Thomas Price do you mean Professor Thomas Price, of San Francisco, the assayer?

A. I mean Professor Thomas Price.

Q. Are you acquainted with the Stirling mines in the Coso mining district, being the mine mentioned in the pleadings and the mine alleged to have been sold by Silva to the complainant in this action?

A. Yes, sir.

Q. How long have you been acquainted with that mine?

A. Since 1877, until this last two years.

Q. Have you ever made any assays of the ore which came
1144 from that mine?

(Objected to by complainant on the ground that it is immaterial, irrelevant, and incompetent, for the reason that the witness has stated that he is not a competent or correct assayer.)

A. I have made some myself, but I have had a quantity made by others.

(Counsel for complainant objects to the statement of what was made by others, as they can give the result of their experiments or assays.)

Q. Take the ones that you made first and state what the assays amounted to.

(Objected to by complainant on the ground that it is immaterial and irrelevant, and it is shown that the witness is not a competent assayer; further, it is not shown that he made assays of samples of ore such as are in evidence.)

A. I have taken assays from there and taken them to Thomas Price and had them assayed by him.

(Counsel for complainant objects to the witness testifying as to the result of any assay or assays made by Thomas Price, for the reason that Thomas Price is the proper witness as to the result of any such assay.)

Q. I ask you not what somebody else has said, but take the samples of ore from the Stirling mine which you assayed in person and tell me what the assay amounted to.

1145 (Objected to on the ground that it is irrelevant, immaterial, and incompetent. The witness has already shown he is not a competent assayer.)

A. I have taken samples and made assays there that ran from ten to twelve ounces up to between eighty and ninety.

Q. State what you mean by "ounces."

A. Ounces of silver. I do not know myself that I tested that much lead, because I was satisfied there was considerable lead in it.

Q. I would like to know whether samples which showed such assays as you have mentioned were similar to the samples which you have examined here, being Exhibits G, H, I, J, K, L, and M?

(Objected to by complainant as incompetent, immaterial, and irrelevant. It is already shown by the witness that he is not a competent assayer, and on the further ground that it is impossible for any man to tell whether they are the same value or not by looking at them; it can only be determined by assays.)

A. Some of that ore is shown the same by looking at it and some different. Some of it is heavy galena. I do not see any heavy galena in that. Some of that is better and some that I assayed is worse to look at.

Q. I will ask you if Exhibit L would not represent the best quality of ore in the Stirling mine or not?

(Objected to by complainant as leading, incompetent, and irrelevant, and the witness has already shown he is not a competent assayer.)

1146 A. I consider that the best kind of carbonate ore that is in the mine, but not the galena.

Q. Is there a better class of ore in the Stirling mine than even this?

(Same objections by complainant.)

A. Yes, I think there is a better class, but not in so much quantity as the carbonate.

Q. Now, take the samples referred to, commencing at G and ending at M, do they fairly represent some of the ore in the Stirling mine like that which you assayed yourself?

(Same objections by complainant.)

A. I do not see any material difference in some of it from what I assayed by looking at it.

Q. I understand you, then, that it represents the class of ore known as the carbonate ore of that mine?

(Objected to by complainant as immaterial and irrelevant.)

A. Yes, sir.

Q. When?

A. In 1882, I think.

Q. How much?

(Same objections by complainant.)

A. I am not positive as to the amount. I think between forty and fifty —. I could tell you if I was in Darwin.

Q. From whom did you purchase it?

A. From Frank Silva.

Q. Was it ore anything like the samples G to M?

1147 A. No; the consideration was it was the lowest-grade ore there, and I wanted it for a flux.

Q. What is flux?

A. Material that we wanted to run in with other ores in the furnace to help smelt it, partly, and take the place of iron and so on.

Q. Did you assay any of that forty or fifty tons which you purchased?

(Objected to by complainant on the ground that the witness has said he is not a competent assayer, and it is immaterial and irrelevant.)

A. No; Mr. Frank Fitzgerald assayed it.

Q. You spoke about having had some assays by Mr. Price; when was that?

A. In 1882, in August.

Q. How many samples did he assay of that ore for you?

(Objected to by complainant as immaterial and irrelevant.)

A. He made eight assays.

Q. Were you present and saw him make the assays?

A. I saw his brother do them.

Q. At what place was that?

A. 524 Sacramento street.

Q. San Francisco, California?

A. Yes, I think that is the number of his place.

Q. You stood by and saw him make some of these assays?

A. The last I did, the first I did not. I was not satisfied with the first and had them made over again.

Q. How many did you see him make?

A. He made four in my presence.

1148 Q. What did they go?

A. I think they averaged about thirty-one dollars and some cents.

Q. How much lead?

A. I did not try them for lead.

Q. That thirty-one dollars was in silver?

A. They averaged that, to the best of my recollection. They ran twenty-nine dollars, thirty dollars, and thirty-one dollars; one went over thirty-one dollars, and there was an average of over thirty-one dollars of the whole four.

Q. Did you stand by and see it done?

A. The last assay he made I did; I helped to crush some of the ore.

Q. And stood by and saw it cooked?

A. Yes, sir.

Q. Have you stated the assays you made in person?

(Objected to by complainant, as the witness is incompetent to state or know.)

A. I think I stated once before; between ten and twelve to eighty and ninety.

Q. Are you not competent, from the experience you have had, to assay ores for silver to find out what they contain of that one metal?

(Objected to by complainant, in view of the witness' answer, and that the question is leading, coaxing, and urging.)

A. For my own self I am satisfied, but for buying ores I would rather have some person who was more competent.

Q. Do you follow the usual process of assaying for silver

1149 in making your assays?

(Same objection by complainant.)

A. I have been told how to make them—how to flux it and make them.

Q. Did this party in Professor Price's establishment assay in the same way and by the same process that you assay for silver?

(Objected to by complainant as immaterial and irrelevant.)

A. Something similar to it. I suppose every assayer may have a little different way of fluxing his ores.

Q. The ground-work of the thing was the same?

(Same objection by complainant.)

A. Principally the same.

Q. Can you describe right here, from the commencement to the end of an assay, what process you go through to get at an assay?

(Objected to by complainant, as the court needs no instructions, and that the witness is incompetent to instruct in assaying.)

Q. State how you got at it.

A. I have already stated that I do not profess to be a competent assayer.

Q. I insist that you know how; I believe that you can tell us just how to assay ore for silver.

(Objected to by complainant as a statement to the witness, as an effort on the part of counsel to prompt the witness to say what
1150 the witness has continually refused to say—that he was a competent assayer.)

A. I do not call myself a competent assayer; I have said that before several times. The only way I have made assays is for my own satisfaction.

Q. Do you mean, when you say you are not competent, that you cannot assay or can you assay?

(Objected to by complainant as leading and urging the witness to say something which he has several times refused to say.)

A. I mean to say that when I am buying ores I would try it for my own satisfaction, but I always got some one else that was more competent when I come to pay money; I have never made a business of it.

Q. Can you tell us, Mr. Eddy, by what process you make an assay so as to determine what percentage of silver there is in any given quantity of ore?

(Objected to by complainant, as the witness has already answered that he is not a competent assayer and has never professed to be one, and his answer therefore will be uninstructive and not material.)

A. I can fine-pulp the rock, bruise it down, and I can weigh such a quantity as I want in grana or grains. Some people take it and put in so much litharge, so much soda, so much borax, probably a little charcoal; probably you may want a little iron; get it all mixed up well, put it in your crucible and cook it; then you can make your cupels. Take out your button, clean it, put it in
1151 your cupel, and if your cupel is right you get all the silver there is in it, and gold too, if there is any in it. If you do not you will not. Then you can weigh whatever you get out of your crucible. After you have got it cooked then you can figure it down and see how much it will be per ton.

Q. Is that the process?

A. That is the process that I generally go through; I am not defining it exactly; that is a kind of rough process I go through myself.

Q. You have done that a great many times in the last twelve or thirteen years?

(Objected to by complainant as incompetent, irrelevant, and immaterial; that the witness has already shown he is not a competent assayer.)

A. Yes, sir.

Q. You have done it so often that you know the process by heart?

(Same objections by complainant, and also that the question is leading.)

A. Yes; I have done it very often, and I am acquainted enough with it to satisfy myself.

Q. Then the difference between some assayers in finding out how much silver there is in a rock is in the degree of care and the mode they exercise in going through this process more than there is in using some other process different from the one you have described?

(Objected to by complainant as immaterial and irrelevant.)

1152 A. There is not any person who can be too careful in assaying. It does not matter in what process or how it is, you cannot be too careful.

Q. They all use the same process in finding out what the percentage of silver is in rock?

A. No; different processes.

Q. Is not this the process they generally use?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. That is the general process of fire assay.

Q. Were you once in partnership with Mr. J. S. Gorman?

(Same objections by complainant.)

A. Yes, sir.

Q. When in partnership with him did you ever purchase any ore from the Stirling mine besides that you have mentioned?

(Same objections by complainant.)

A. I think not. I am not positive. If I did my memory fails me.

Q. Did you ever get any of the hard ore—the first-class ore?

(Same objections by complainant.)

A. I do not remember.

Q. Do you know a man named Jack Davis?

A. Yes, sir.

Q. Did he ever haul any ore to your place from this mine?

(Same objections by complainant.)

1153 A. I tell you I cannot say. If I was at Darwin and looked over the books I could tell you in a moment.

Q. Did he not haul about six tons of hard ore?

(Same objections by complainant.)

A. I could not say.

Q. Do you remember getting six tons of hard ore from Silva shortly before he sold this mine to the Southern Development Company?

(Same objections by complainant.)

A. No; at that time Mr. Gorman and me were not in partnership.
Q. Did you get the ore?

(Objected to by complainant as irrelevant and immaterial.)

A. I do not remember. It might be possible that I did, but I do not remember. I bought ore of so many that I could not tell you every one. Buying it of thirty or forty different parties I could not remember every one. I could tell very easy if I was at home by looking at the books.
Q. Have you ever visited the Stirling mine?
A. Yes, sir.
Q. Aside from assaying the ore in that mine, did you ever work in it?

(Objected to by complainant as irrelevant, immaterial, and incompetent,)

A. No; to the best of my knowledge, I did not.
Q. Never worked any of it in the furnace?
A. No; what I bought from that mine Fitzgerald worked.
1154 Q. When did you first visit that mine?
A. I think, probably, in 1877.
Q. Who owned it at that time?
A. Mr. Silva and others.
Q. Did you ever visit the mine at the time that Mr. Yerington and Mr. Forman visited it?
A. Yes, sir.
Q. About when was that?
A. I think it was in January, 1884.
Q. Had you ever spoken to Mr. Yerington about this mine before that time?
A. Mr. Yerington and myself had a talk about the mine, I think, in the month of May, 1883.
Q. Where was that?
A. At Lone Pine.
Q. State what that conversation was.
A. I was introduced to Mr. Yerington and he got talking about mines.

(Counsel for complainant objects to the conversation between the witness and Mr. Yerington in 1883 on the ground that it is immaterial, irrelevant, incompetent, and does not appear to be connected in any way with the transaction between the Southern Development Company and Mr. Silva, the respondent.)

A. We had a talk about mining matters and other things and spoke about Silva's mines. I told him that the mine had a very fair prospect in it and looked as though it was going to make considerable ore. He appeared to want to find out as to the southern part of the country, as he was going to run his railroad down there.

1155 (Counsel for complainant moves to strike out what the witness states that he told Mr. Yerington about the mine, for

the reason that it is irrelevant, incompetent, and immaterial and not responsive to the question.)

Q. State the balance of the conversation with Mr. Yerington, if you had any.

A. We had considerable conversation about different mines. He did not allude much to the mines. He said he felt he would like to see the country coming up and the mines improving, so as to give trade to his road.

Q. Did you tell Yerington that this Stirling mine had some ten thousand tons of ore in it, or something to that effect?

(Objected to by complainant as immaterial, irrelevant, and leading.)

A. No, sir.

Q. If Mr. Yerington testifies in this case that you told him that mine had ten thousand tons of ore in it, would Mr. Yerington be correct or not?

(Objected to by complainant that Mr. Yerington cannot be impeached in that way, and the time, place, circumstances, and persons present not having been called to his attention if he did so testify; second, it is immaterial and irrelevant; third, Mr. Yerington gave no such testimony; fourth, the question is hypothetical and not based upon the facts proved or established in the case.)

A. No; he would not.

1156 Q. Did you, on that occasion, state to Mr. Yerington what the value of the ore was in that mine; about how much it would go in silver and lead?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. I think I told him at that time that the ore would go thirty ounces in silver and forty per cent. lead.

Q. Was the conversation at that time in Lone Pine about this mine commenced by you or Mr. Yerington?

(Same objections by complainant.)

A. I could not say which.

Q. You do not know who broached the subject?

A. I could not say for certain who broached the subject. Mr. Yerington might know; he might have a better memory than me.

Q. Was there much more said about the mine on that conversation between you and Mr. Yerington?

(Same objections by complainant.)

A. No; I do not think there was. It was more of a general talk about the southern portion of the country than anything else.

Q. When was the next time, if any, that you met Mr. Yerington and had any talk about this property?

(Same objections by complainant.)

A. I think it was on the 13th of December, 1883, on my way from San Francisco to Darwin. I met Mr. Yerington at Carson; he came as far as Hawthorne with me.

Q. Where were you going?

A. I was going to Darwin.

Q. Where did you meet Mr. Yerington—between what two
1157 points?

A. I met him at Carson.

Q. He came down as far as Hawthorne with you?

A. Yes, sir—that is, he was on the same train.

Q. State what conversation, if any, took place between you and him in regard to this mine at that time.

(Objected to as irrelevant and immaterial.)

A. On the way between Carson and Hawthorne Mr. Yerington sent some person—who it was I do not know—back into the car where I was and told me to come into his car, he wanted to talk to me. In fact, right at Carson Mr. Yerington handed me a telegraphic dispatch from San Francisco. Mr. Bender was the man that introduced me to him at Carson, although I had been introduced to him before at Lone Pine. He sent a man back in the car I was in and told me he would like to see me in his car, so I went in. We had some little talk, and then Mr. Yerington introduced the Silva mine and asked me whether it was sold or not. I told him I thought that it was, and he asked me how much it had sold for. I told him twelve thousand five hundred dollars, and we talked on about it. He said, "In the event that it is not sold, when you go to Darwin see Silva and ask him if he will take ten thousand dollars for the mine. In fact," he said, "I have heard a good deal about the mine, and I think I will need it." So I told him I would see Silva when I arrived at Darwin and speak to him about it. I got to Darwin, I saw Silva, and I told him what conversation Mr.
Yerington and me had, and he said he would not take ten
1158 thousand dollars for it. In the meantime I had, I should say, received a dispatch at Carson which Mr. Yerington handed me, saying that Sam. Lincoln could not come up to look after this property for some one who was going to give twelve thousand five hundred for it, but he would send another man.

(Counsel for complainant objects to all the witness has said respecting the dispatch and the offer of twelve thousand five hundred dollars and the action of the party who offered it and moves to strike out what the witness has said on that subject.)

A. I think that is pretty near all.

Q. Is that the dispatch that you spoke of before that Mr. Yerington handed you?

A. Yes, sir.

Q. Did you show him that dispatch?

A. I did not show it to him; he delivered it to me himself.

Q. Did you inform Mr. Yerington about that?

(Objected to by complainant as immaterial and irrelevant, and that Mr. Yerington is the person who imparted the information to the witness at that time.)

Q. Was this a closed-up dispatch that he handed you?
A. An open dispatch.
Q. Which he could read as well as you?
A. I suppose he could if he wanted to.
Q. What I mean was, was it a private dispatch or a public dispatch that came over the wires?

(Objected to by complainant as immaterial and irrelevant.)

1159 A. It was a private dispatch to myself.
Q. What did Mr. Yerington have to do with handing you the dispatch; what connection had he with it?

(Same objection by complainant.)

A. If you asked him he might tell you; I am sure I do not know, any more, probably, than friendship; fetching it out to me.
Q. Did he have anything to do with the dispatch and your business?

(Same objection by complainant.)

A. None at all.
Q. What had he got to do with it, anyhow?

(Same objection by complainant.)

A. I do not know, any more than grounds of friendship; the dispatch was lying there and he fetched it out and handed it to me; in fact, before that, Mr. Bender, at Reno, notified me there was a dispatch there waiting for me.

(Counsel for complainant moves to strike out the last answer.)

Q. Have you stated about all the conversation you had with Mr. Yerington on this last occasion?

(Objected to by complainant as immaterial and irrelevant.)

A. After this we had considerable conversation on the road; I think that is about all that it amounted to, about the mine.
Q. Now, had you any other conversation with Mr. Yering-
1160 ton, subsequent to the time mentioned, about this Stirling mine?

(Same objections by complainant.)

A. Yes; after he arrived at Darwin.
Q. State the time of the year.

(Same objections by complainant.)

A. I think it was in January, 1884.
Q. Go on and state the conversation.
A. Mr. Yerington and Mr. Forman arrived at Darwin, to the best of my knowledge, about the 16th of January, 1884. He inquired for Frank Silva. I told him that he was in Darwin. He said he

would like to see him. I told him I would go and see if I could find him. I went in search of him, found him, told him Mr. Yerington wanted to see him, and he did not care much about coming to see him. He said, "I know what it is about;" some words to that effect; "I have had a good many men after me about this mine, and I don't care about seeing any one about it." Still, in the end Mr. Silva and him met. I introduced Mr. Silva to him, and Mr. Silva and him had considerable talk. What the conversation was I do not know. When they got through Mr. Yerington asked me whether I would go to the Stirling mine with him the next day. The next day we went to the Stirling mine; Mr. Forman and Mr. Yerington together; myself alone, and Mr. Silva alone.

1161 Q. What did you do out there, if anything?

A. We went through the mine and saw some portion of the surface work; went down in the mine.

Q. What was the first point visited at the mine?

A. I think it was the northwest drift, in the main tunnel.

Q. Did you visit inside of the mine before you visited the outside?

A. I think not—that is, a portion of the outside first.

Q. What was the first point outside that you visited?

A. The point of location was the first place that we visited.

Q. What was said there by Mr. Yerington and Mr. Silva and the balance of you about that?

A. I do not think much was said at that point. There was some ore showing there. They said it looked favorable; some galena ore. There might be some common talk that I do not remember.

Q. Did Mr. Yerington or Mr. Forman, at the time that you were at the point of location, ask Silva, pointing to the work which there appeared to be done, "Is this all the work which is done at this point," or did he say anything in substance like that, either he or Mr. Forman?

(Objected to by complainant on the grounds, first, that if they did so testify they cannot be contradicted or impeached, for the reason that they were not informed as to the circumstances, the persons present, and the impeaching questions were not put; no predicate was laid for impeachment while those witnesses were testifying; and, secondly, neither Mr. Yerington nor Mr. Forman nor any

1162 other witness testified that any such statement was made at that particular time or place.)

A. I could not say positively whether any such remark as that was made or not.

Q. Did you hear any such remark made?

A. I do not remember.

Q. Did you ever hear Mr. Yerington or Mr. Forman asking such a question at any time?

A. I do not remember any question being asked like that. If it was I do not think I was present.

Q. Were you at the point of location all the time when Mr. Yerrington and Mr. Forman were there at this visit?

A. I was close to it; I do not know; I was right close to it.

Q. How long did the parties remain at that point about?

A. They did not remain there any length of time—probably fifteen or twenty minutes. There was only a small excavation to look at, and it did not take long to do it.

Q. Was that considered at all an important point on the mine by any of you at that time?

(Objected to by complainant as irrelevant, immaterial, and incompetent to prove by this witness what the other persons considered.)

A. It looked a very favorable point. There was considerable galena showing there.

Q. Describe about where that place was. Was there a fireplace there?

A. That is what Silva used it for—for a cooking place.

Q. Do you know how long he had used it for that purpose?

A. Quite a long time—about all the time that he was at
1163 the mine. In fact, I have been at the mine several times, and that is the place he always used.

Q. At the point of location marked "red," representing the seven-foot shaft, how far from that point were these galena croppings that you have spoken about?

A. I did not see any shaft seven feet when I was there.

Q. At the place where that shaft was how far from the place where the shaft was or is now did you see ore at that point?

A. Close alongside of it. On each side as the cut was in there is galena ore.

Q. And is the ore at that point of location outside of the little shaft itself and beyond it?

A. There is ore to the west of it, above this little place, on the croppings there—good heavy galena—and it looked well for croppings.

Q. So, outside of the shaft itself, is the appearance favorable or unfavorable?

A. Above it, to the west of this place, "point of location," there is galena ore showing there on the croppings.

Q. Did it look well at that time?

A. It looked a very favorable prospect at that time.

(A recess was here taken to Monday, January 21, 1886, at 9.30 a. m.)

1164 MONDAY, *June 21st*, 1886.

(Counsel and parties met pursuant to adjournment.)

J. C. EDDY recalled for further examination.

Mr. MINER:

Q. What was the next place you visited at the mine?

A. We started into the main tunnel. I think, to the best of my knowledge, we visited the north drift.

Q. Tell me what you did in the mine and what the examination was.

A. There, there was some little ore in the place, but not very much. They certainly examined it to suit themselves. Then we went to the south drift and saw some ore in places—not very much in the south drift—and followed it on to number two winze; went down to the thirty-eight-foot level and examined that thoroughly through, and from there to the ore chamber. Both Mr. Yerington, Mr. Forman, and myself and Frank Silva went there together. They started in to look at the body of ore and sampled it wherever they pleased. I heard no objection made to any place that they wished to sample. During this time they had a small pick of some description with them, and they could not use it as good as they wished to. I went on top and brought them another pick, and they started and took samples wherever they wished themselves. Every place they thought of taking samples I suppose they took; it looked so to me, and they appeared to be well satisfied with the looks of the body of ore.

1165 (Counsel for the complainant objects to the witness stating what appeared to him and what he thought and what others thought; the testimony should be confined to facts.)

A. Both Mr. Yerington and Mr. Forman thought well of the looks of the body of ore.

(Counsel for the complainant objects to the answer and moves to strike it out.)

Q. State what they said.

A. They said they liked the looks of the body of ore.

Q. How long were you gone on top to get this pick?

A. Not over five minutes.

Q. Were you present all the time that Mr. Forman and Mr. Yerington were in this ore chamber, outside of the time that you went to get the pick?

(Objected to by complainant as leading.)

A. I was as close as four men could get; maybe sometimes I might be a little on one side and might be a little ahead of them and might be behind; I was within close proximity to them nearly all the time.

Q. Describe the size of the pick that you had before you went after the other one.

A. I could not say the size of it; it was a very small one of some description. It was a kind that they could not use to any account to take samples with.

Q. What was the size of the pick that you went after?

A. A regular common mining pick.

Q. A good pick?

A. A pretty fair pick.

Q. From what place in the chamber did they take samples—
1166 that is, Mr. Yerington and Mr. Forman?

A. They took samples from several places. I do not know that I could say the places now.

Q. I want the places in the ore chamber. Designate it, whether top, sides, or bottom.

A. They took some on the top, some on the sides, and some on the bottom.

Q. Can you draw a diagram showing the shape of this ore chamber at the time of that visit and showing the size of the bottom of it?

A. At the time that we were there the bottom of the same chamber, I would judge, was about from 14 to 15 feet deep from the windlass to the bottom of it, and probably some 12 or 13 feet wide.

Q. That does not give us any idea of the shape. I want you to draw a diagram showing about the size and shape of that ore chamber. What was the ore chamber? Was it a perpendicular shaft or not? State what it was.

A. It was not perpendicular; it was on an incline.

Q. Was it an incline winze?

A. That is what you might call it.

Q. What constituted the lowest part of that ore chamber?

A. Do you mean the bottom of the winze?

Q. The bottom of the ore chamber.

A. You could not call it any ore chamber at that time.

Q. Was there anything there that would represent the bottom of it; was there not a little excavation in there?

1167 (Objected to by complainant as leading.)

A. There was an excavation above the bottom.

Q. Look at Respondent's Exhibit "F," at the part of it marked "No. 8," which represents the ore chamber; look at the southeast corner of this "No. 8," and there is a little excavation in it. Was there or not an excavation of that kind in the ore chamber at the time of this visit of Mr. Yerington and Mr. Forman?

(Objected to by complainant as leading.)

A. Yes; there was a very small hole dug down.

Q. What was the size of it, about?

A. Just large enough for a man to stand in; that is about all.

Q. Was that in the lowest part of the ore chamber at that time?

(Objected to by complainant as leading.)

A. It was very near to the lowest part of it.

Q. Supposing that was in the eastern end of the ore chamber, would the eastern end of the ore chamber be the lowest part of the ore chamber at the time of your visit?

A. I think the main portion of the winze was a little below the eastern end, where this excavation was.

Q. Will you draw a diagram representing the shape of this ore chamber, commencing from the 38-foot level down, so that we can see what it looks like?

A. I do not know that I am very good on drawing.
Q. Cannot you make a representation with a pencil?
A. I may not make it, perhaps.
Q. Can you do it at all?
1168 A. I may make some kind of a shape.

(Counsel for the complainant objects to the witness making any diagram for the purpose of evidence until he is questioned as to whether he can make a drawing which will fairly represent the ore chamber.)

Cannot you make a drawing and let me see it?
Q. No; I wish you to draw something to illustrate your ideas; I am not asking you to draw something exact; please draw something which represents your ideas, not my ideas or Mr. Reddy's ideas.

(Counsel for complainant objects to the witness being urged to make a drawing unless the witness shall first be asked whether he can make a diagram or drawing of the ore chamber which will fairly represent it as it was at the time he examined it; and, until he answers that he can, I object to his making any such diagram.)

Q. As I understand you, from the thirty-eight-foot level down to where this little excavation of the ore chamber was a distance of about fourteen feet; is that correct?
A. 14 or 15 feet.
Q. With your back to the 38-foot level going down, with your face towards the eastern end of the chamber, what was the width of the chamber from right to left?
A. I would be liable to break my neck going down in that way.
Q. I say supposing you were in that position.
A. Going down the way it was when I see it, my face would
1169 be towards the 38-foot level.
Q. Your back would be towards the little excavation at the end of the chamber?
A. Partly towards that.
Q. What would be the width of it?
A. I would judge some 12 or 13 feet.
Q. Northeast to southwest. Was that place 13 feet wide? What was the width of the chamber? You do not seem to understand my question at all. Look at this model, Defendant's Exhibit "F," and look at the figure marked "No. 8." If that side is the northeast side of the chamber what was the width of this incline at the time of your visit across from this northeast side, across this way to the northwest side; what was that width across there?
A. Do you mean at the bottom of this winze, or higher up, above it?
Q. I mean at the bottom of it.
A. The very bottom of the winze was not over four feet wide.
Q. What was the distance across the chamber north and south?
A. Some 12 or 13 feet in place; in the bottom of the winze, I judge, from five to six feet.

1170 Q. Now, sir, can you draw a diagram which would give an idea of the shape of the chamber in these different measurements which you have described?

A. I would rather have some one else do it.

Q. Can you draw it at all; can you make anything?

A. I might for myself, but probably you would not understand it.

Q. Will you do it for yourself; draw it, and let me see it?

A. You have got a map here, and I can tell you by the map or by the model.

(Counsel for complainant objects to the witness being urged, and on that point the witness has fully and fairly answered that he does not think he can draw a diagram that other people can understand. If others cannot understand it it is useless.)

A. I am a poor drawer, or I would try and do it.

(Counsel for respondent draws a diagram. Counsel for complainant protests against counsel for respondent stopping the examination to draw a map or diagram of the mine by his own hand and present it to the witness, first, because it is a great loss of time and an irregular way of doing; and, secondly, because he has a map sworn to be correct and a model on which the witness may be examined; and, next, it would be leading the witness to present him with such a diagram.)

Q. How did you get into this ore chamber; by what means?

A. By means of a small ladder.

1171 Q. What was the length of the ladder?

A. I think probably about six feet.

Q. Was the bottom of the ladder anywhere near this little shaft that you have spoken of being in the southeast end of the chamber?

A. No; it was above it.

Q. How far above it and how far from it?

A. It was above it about six or seven feet, probably.

Q. Describe the bottom of the chamber at the place where the little shaft was sunk, whether it was slanting or not.

A. The winze goes down slanting, pretty close to the bottom at the southeast end; there was a little hole dug, almost perpendicular; a very small and very shallow hole.

Q. Is that hole represented on this model at figure No. 8?

A. I should judge it would be about here, some place.

Q. Is it represented there?

A. That looks very like the hole. (Witness points to the little shaft marked "14" on the model.) You do not suppose a witness is going to remember after two years? He has got to look at the model.

Q. Wait till I ask you a question. At the time of this visit describe the shape, condition, and size of the ore chamber at the point where the little shaft was dug, the little shaft marked "14" on the model.

A. I have already described it, I think.

Q. Never mind whether you have or not.

(Counsel for complainant objects to going twice over the same ground.)

1172 A. I say it is a very small hole, a kind of a round hole and shallow.

Q. I want the size of the bottom of the chamber at that point—the size north to south and east to west.

A. At that point it may be a little larger than the bottom of the winze; not much.

Q. Commence from the bottom of this ladder that you say was there. What was the distance from the bottom of the ladder to the southeast end of the chamber and the end of the ore chamber in that direction?

A. Four or five feet.

Q. What was the width of the chamber in the other direction—northeast to southwest—across the little shaft?

A. From northwest to southeast?

Q. Northeast to southwest and at a line that would go across the little excavation to the two sides of the chamber; the width of the chamber at that end?

A. It all depends how you make a chamber. If you want the width of the ledge I will tell you it.

Q. I want the dimension of the ore chamber at the southeast end. You state there was a ladder that came down here. I want the distance from this ladder to the southeast side. Then I want the distance from the northeast side to the southwest side at this end of the chamber, where the little shaft is.

A. A moment ago you asked me a question—right at the foot of the ladder.

Q. I have got that answer. What is the distance from this
1173 point—the southeast side of the chamber—to this side, being the northwest side, at the time of that visit?

A. Right where the little excavation was?

Q. Near the line going across the top of the little excavation from the northeast side of the chamber, extending back across the little excavation to the southwest side of the chamber. There is my pencil.

A. If you call it northwest and southeast you will be more correct.

Q. No; because there is the north and south running through this model. Here is west and here is east.

A. Probably about five feet.

Q. I will ask you at what point the chamber began to slant up towards the 38-foot level; at what point in the chamber?

A. It is slanting all the way.

Q. Did it slant from the 38-foot level clear down to this little excavation in the southeast end of the chamber?

A. Yes, sir.

Q. What was the angle?

A. Probably about forty degrees; maybe a little less. I do not think it was. I shall have to guess at the angle.

Q. When you came down the ladder how much of the surface ground to the bottom of the chamber did you have to stand upon

after you stepped off of the ladder down into the southeast end of the chamber; how much of the surface did you have there that you could stand upon?

A. We did not have a great deal.

Q. How much one way and how much the other.

A. I suppose it was seven or eight feet one way and thir-
1174 teen or fourteen the other on the length of the ledge.

Q. Which way was the length of the ledge?

A. The ledge, to the best of my judgment, was running northwest and southeast, so that would be on the length of the ledge, and then across the ledge from the hanging to the foot wall; I should judge seven or eight feet.

Q. What was back of this ladder, if anything?

A. Ore.

Q. State the condition of the bottom of the chamber, or what was then the bottom, and the floor. What was then the foot wall of that inclined winze?

A. The foot wall was in ore, as far as I see.

Q. You said that Mr. Forman and Mr. Yerington took samples out of the bottom of this chamber. Did you see them take them out?

A. I saw them take samples at different places.

Q. Was the bottom of this chamber covered up with waste or loose ore to such an extent that you could not see the bottom?

A. There was some ore and waste in the bottom, a kind of a mixture which had been let down there in some way.

Q. That does not answer my question.

A. It was not entirely covered up.

Q. Was the little shaft marked "14" on the model filled up so that you could not see it at the time of this visit?

A. No, sir; Mr. Forman had taken some samples out of the small shaft.

Q. After you returned with the large pick did they use it in the chamber?

A. Yes, sir.

1175 Q. Did either Mr. Forman or Mr. Yerington take samples from across the bottom of this chamber from northeast to southwest?

(Objected to by complainant as leading and as putting words into the mouth of the witness.)

A. From northeast to southwest, at the bottom of the winze.

Q. Across the bottom of the ore chamber?

A. Above the bottom of the winze they took ore in the ore chamber, not in the bottom, because the ore was not cut out, not above that.

Q. Above what?

A. Above the bottom of this inclined winze.

Q. We are calling the ore chamber the inclined winze, are we not; that is what I am calling the ore chamber.

A. They took samples across the ledge, wherever the ledge was

exposed. In this bottom the ledge was not exposed, so they could cut across it. It was some place about there. They took the samples clear across the ledge wherever they wanted to.

Q. In getting down into this ore chamber you went down a ladder. Now, then, did they take samples across what would be the foot wall of that chamber, going down upon that ladder?

A. After they stepped off from this ladder they took samples across?

Q. The bottom? Across the lowest side of that excavation.

1176 (Objected to by complainant as leading and urging.)

A. I told you on the lowest side of that excavation, when you get to the bottom, the ledge was not cut through, and you could not take samples from there, at the end of the chamber.

Q. Did they take samples of the ore out of the lowest part of that excavation?

A. The lowest place where they came they took samples.

Q. What was this place?

A. This little hole.

Q. They took samples from there?

A. Yes, sir.

Q. From that little hole up to the 38-foot level, the bottom of the winze went up in a slanting direction at about forty degrees?

A. Probably about that.

Q. Did they take samples across that side which went up at an angle of forty degrees, all the way up to the 38-foot level?

(Objected to by complainant as leading.)

A. They took samples, several of them, to suit themselves, clear across the ledge matter, wherever the ledge was exposed so that they could take it.

Q. Was the ledge exposed at the side that you came down, on the side on which the ladder rested?

A. Yes; there was ore there.

Q. Did they take samples out of there?

(Same objection by complainant.)

A. They took samples from where the ladder came down and stood this way. They stepped off here onto a kind of
1177 bridge of ore that was standing here and took samples beyond it on the northwest side.

Q. Did you hear any conversation between Mr. Yerington and Mr. Forman and Mr. Silva in that ore chamber at that time?

A. I was talking pretty near all the time they were there about different things; how the ore body looked.

Q. State what the conversation was about.

A. The conversation was partly about the ore and how it looked; what amount was there. There was a general conversation there about the amount of the ore and the quality; I could not tell every word that was spoken there.

Q. How long did Mr. Forman and Mr. Yerington remain in the ore chamber at that time, on that visit?

A. I should think an hour.

Q. Did you hear Mr. Forman say anything about the bottom of this chamber being filled up with waste? If so, state.

A. They spoke about there being some dirt in the bottom of it. I think either Mr. Yerington or Mr. Forman spoke about this dirt here, and what was in the bottom.

Q. What was it?

A. The hanging-wall side of the winze was exposed, but there was dirt, ore matter, and the waste that had run down on the foot wall, that had covered the foot-wall side of the winze; I could not say what was there; there might be a ton and a half of dirt altogether.

Q. Was this dirt sufficient to entirely cover up the foot wall of that winze?

1178 A. It covered it for a small thickness a small depth.

Q. Was it of such a depth that it entirely filled up this shaft at the southeast corner, so that it could not be seen?

A. No; because the little shaft is a little higher than the bottom of the main winze or ore chamber, whatever you call it.

Q. Is there anything on this model that would represent about where the lowest bottom of that winze is, the place which would be lower than that little shaft? If so, point it out.

A. By the looks of this model, it would be over here (pointing to No. 8). I would judge that the deepest point was here.

Q. What point would that be?

A. I would call it the northeast point.

Q. Was it a point where winze No. 2 came down or not?

A. Certainly.

Q. Is not this No. 2 winze on this model?

A. No. 2 winze — on the model.

Q. Then this corner is not where No. 2 comes down?

(Objected to by complainant as leading.)

A. Here is a ledge running northwest and southeast and pitching northeast, and the incline is on the pitch of the ledge, so that the bottom of that must be pitching northeast.

Q. In the chamber does not winze No. 2 come down on the

1179 southwest side of the ore chamber?

(Same objection by complainant.)

A. On the southwest side.

Q. Does not winze No. 2 come down on the southwest side?

(Same objection by complainant.)

A. No; I consider it comes down on the northeast side.

Q. Do you know which is north, south, east, and west in that ore chamber?

A. I cannot tell. I did not have a compass. I judge it by the way the ledge runs.

Q. In which end of the chamber is the little shaft sunk?

A. The sontheast end.

Q. In which end of the chamber is the winze coming down—winze No. 2? Where does winze No. 2 strike the ore chamber; on which side?

A. The winze goes down on top of the ore chamber.

Q. Does it not go down into the 82-foot level?

A. The 82-foot level was not there.

Q. Does it not go there now?

A. It is connected with it.

Q. On which side of the ore chamber does it pass down through?

A. On the northeast side.

Q. Does it not pass down on the southwest side?

A. I did not see it. It did not pass on the southwest side. I do not consider it does.

1180 Q. Look at Complainant's Exhibit 2 and Respondent's Exhibit F; look at Complainant's Exhibit 2 first. If this represents the north side and this the east side and this the south side and this the west side on that model and upon Respondent's Exhibit F this represents also the north side and this the east side and this the south side and this the west side; if this line running through Respondent's Exhibit F here on which I place my pencil, marked "line, magnetic," with "S" at the end of it, upon which side of the ore chamber would winze No. 2 pass down?

A. I should say the same as I did before, on the northeast side.

Q. I am not asking you that. Supposing this is the south side.

(Counsel for complainant objects to counsel urging the witness, and that the question is leading and contradicts the witness when he undertakes to state what he considers a fact.)

Q. If this is the south side and this is the west side of this model (Exhibit F), on which side of the ore chamber would this winze No. 2 pass down? Now, I turn the model as near as I can to the point of the compass; both models are standing according to the points of the compass. If this is the north side with the figure 8 and this side of the model is north, on which side of this chamber does winze No. 2 pass down, according to the points of the compass?

A. Have you got either end of the ore chamber? If you have then I might answer the question.

1181 Q. There is the ore chamber, as represented on the model.

A. I see how it is represented.

Q. On which side of that inclined winze or ore chamber, or excavation called an ore chamber, did winze No. 2 pass down?

A. Winze No. 2 was sunk the same as I say, but on the southeast end was where they called the end of the ore chamber.

Q. At the time of your visit?

A. There was ore all through it at the time of my visit.

Q. At one time was that called the southeast end of the ore chamber?

A. I do not know what you call it.

Q. I am asking you on which side of this chamber winze No. 2 goes down.

A. I answered you before, and I am not going to answer you any

differently. You are asking questions that I do not like, and I am not going to answer them, either. Here is a ledge running northwest and southeast and it is pitching to the north; you call it northeast. I said this winze was sunk on the top of the ore body and the ore body lay beneath it.

Q. I know that.

A. What more do you want, then?

Q. Look at this model as it stands. Assuming that is placed so as to represent the workings of that mine and this is the north and south line; the line marked on the bottom of the model "true north," "N" and "S," and there is a magnetic variation of
1182 15 degrees east; the model is now placed according to the points of the compass, would this figure marked No. 8 on the model and this figure No. 2 on the model represent, respectively, namely, No. 8, the ore chamber of the excation, in there called the ore chamber, and would this No. 2 represent substantially winze No. 2, going down to the 82-foot level?

A. I think there is a difference in that model and the one that was taken when I was there at that time.

Q. What is the difference?

A. I think the difference — that the winze that is sunk now is just in this kind of position, but in the other one you have taken off the width of the winze and made it the length of it and gone below with it. It does not make any difference in the ore chamber. As this lays now the ore chamber must be to the northwest side of it.

Q. I would like you to take a piece of paper and put it in 8, which represents the ore chamber, in such a shape as it would illustrate the bottom of this chamber at the time of the visit of Mr. Yerington and Mr. Forman.

A. Give me a few years to learn to be a surveyor, and I will go and survey it for you.

Q. Could you take a piece of paper and lay it in there so as to show how the bottom of this chamber looked at the time of your visit—whether slanting or flat?

A. Certainly it is slanting. I said that before, a dozen times.

Q. This ore chamber represented on the model, now, is flat?
1183 A. Certainly, as it is represented there.

Q. Cannot you put a piece of paper in there to represent about the way the bottom of it looked on your visit; can you do that?

A. As it looked——

(Objected to by complainant, unless the paper be permanently fixed there so that the court can see it, and, in the next place, it is objected — until the witness states that he is able to put it there so as to represent the dip and appearance of that place.)

A. Do you call that the bottom of the present ore chamber?

Q. Yes; that is what you can walk round on and stand on.

A. At the time we were there you could not walk around on it and stand on it.

Q. Why?

A. Because there is not enough excavation at the bottom of the ore chamber to stand on unless you get hold and went onto the foot wall—that is, outside of this winze that was sunk.

Q. I have placed a piece of paper in the middle.

(Counsel for complainant objects to such a thing being done and to the model being altered in any way from the manner in which it was made by the surveyor, and objects to counsel fixing the model or making any changes in it, on the ground that it would be leading the witness, if the witness should follow it, and, in the next place, that it is not so fixed in the model as to remain permanently
1184 or until the court can see it.)

Q. Would that piece of paper in any way illustrate the position of the latter on which you came from the 38-foot level down into the bottom of the chamber?

(Objected to by complainant on the ground last above stated.)

A. That would be similar to the direction. It might be a little different. It is fixed a little different.

Q. Now, fix it in there so as to illustrate about the way that ladder came down.

A. The ladder came down something similar to that.

Q. From the 38-foot level down to the bottom of the ladder?

A. Yes; from the bottom of the ladder to the bottom of the incline it runs a little flatter.

Q. Now, that flatter surface; is that the surface that you have described as being so many feet one way and so many feet another?

A. Not to the bottom, but just below the ladder is the biggest portion of it; just below the foot of the ladder.

Q. What was that excavation?

A. It was about eight or nine feet by thirteen or fourteen long.

(Counsel for complainant objects to counsel for respondent moving the paper after the witness has testified and put it in position. (Counsel for respondent states that the witness did not put it there, but that he put it there himself.)

1185 Q. Does the paper now illustrate about the way the ladder came down from which you entered that ore chamber which you have spoken of?

(Objected to by complainant as leading.)

A. It is pretty near the same as the ladder came down.

Q. Now, I will ask you to mark that paper 15, so that we can refer to it. Did you go to any other place in the mine after leaving this ore chamber?

A. We came up out of the chamber and Mr. Yerington and Mr. Forman went down the second time. Mr. Yerington made the remark that he was not satisfied as to the run of the thing, and the pitch, and so on, and he would like to have another look at it, and himself and Mr. Forman went back into the ore chamber themselves.

Q. Did they go in it alone?

A. At this time; yes.
Q. How long did they remain in it at that time?
A. A very few minutes.
Q. Now, after coming out that time, where did they go?
A. They came onto the 38-foot level, and Mr. Forman said that he was not satisfied with some samples that he took at the time before that he was there, and he wanted to take some more in the roof of the 38-foot level.
Q. Did he take any more?
A. Yes; he took some samples.
Q. Where did they go next, if any place?
A. They looked around every place in the 38-foot level, talked about the ore, and so on, and from that we went to the surface.
Q. Did you go down to what is called the 82-foot level?
1186 A. No, sir.
Q. Are you sure about that?
A. Yes, sir; Mr. Yerington asked Mr. Forman about going down there; Mr. Forman told him he had been down there and there was some little ore down there.
Q. Did they examine any part of the surface after coming out of the mine?
A. I think they examined two places; it was either before we went in there or after they came out.
Q. Is there anything upon that model representing a point at the surface that they examined or any point between the surface and the tunnel level?
A. There is a place that looks similar.
Q. Did they examine that place marked No. 7 on the model?
A. At that time it was called the sleeping tunnel where they examined, where Mr. Silva used to have his bed on one side of it; it was a kind of a large excavation.
Q. You are getting this a little mixed. Look at Respondent's Exhibit E. Do you remember an upraise from the tunnel level of the southeasterly cross-drift near winze No. 1?
A. Yes, sir.
Q. Does not that figure on the map illustrate that upraise—this figure marked "slope, 29 feet up" and marked at the other end "incline tunnel, 41 feet?"
A. It looks something like it.
Q. Was that the place that they examined at that time?
A. No; the place they examined at that time was above this main tunnel on the surface.
1187 Q. This point here, marked "croppings," represents the surface of the ground. You commenced outside of the hole on the surface and run down into this inclined tunnel and commenced with winze No. 1. Is not that the point?
A. The point that I mean is northwest of this.
Q. Does this over here, marked "sleeping-room tunnel" in red, connect with the tunnel level?
A. No, sir.
Q. It does not?

A. No, sir.

Q. Does not the figure represented by No. 7 on the model connect with the tunnel level?

A. It connects with the tunnel level.

Q. Look at this figure, marked "No. 1," to represent winze No. 1. Did they examine the mouth of that winze?

A. They examined it, but did not take any samples from it.

Q. Does not the upraise commence right across the tunnel and just above the mouth of winze No. 1 to connect with the surface?

A. The opening commences close to it and connected through to the surface.

Q. Did Mr. Yerington and Mr. Forman examine that upraise at the time of this visit?

A. I think not; they might possibly have done it, but in two or three years a man cannot remember everything; I never made a note of any description of what happened at that time.

Q. After examining the mine did they go away from it on that day?

A. We came to the surface.

1188 Q. How long were they engaged in making this examination altogether?

A. Do you mean from the time they arrived at the mine until they left?

Q. Yes, sir.

A. I should think three hours.

Q. Did they have many samples with them?

A. I have got to answer the same. I could not tell the number of samples.

Q. How did they carry the samples—in buckets or sacks?

A. In sacks.

Q. Did they have more than one sack?

A. Yes; they had a sack for each sample.

Q. Did they put all finally in one big sack to carry or in separate sacks?

A. I could not answer that, whether they put the small ones into a large one and put it into the buckboard. I think they tied the small sacks into a large one. In fact, I know they tied the small sacks and then put the small sacks into a large one, each sack separately.

Q. Did they return to Darwin then?

A. After we came to the surface we talked considerable about hauling. Mr. Yerington wanted to know about how much it would cost to haul the ore to Keeler, and asked Mr. Silva whether he would like to take the hauling. I think all of us gave figures on the hauling. I told him it should not cost over twelve dollars a ton to haul it.

1189 Q. Was anything said about whether the ore would pay to ship that distance or not?

(Objected to by complainant as leading.)

A. I think I told Mr. Yerington that taking the ore as it was, as a body, that I thought he could do better by putting a furnace up and smelting it right close by.

(Counsel for complainant objects to what the witness told Mr. Yerington as incompetent, irrelevant, and immaterial.)

Q. Was this a general conversation taken part in by all of you?

(Objected to as leading.)

A. Yes; a general conversation.

Q. What did Mr. Silva say, if anything, with regard to shipping the ore or anything else?

A. Mr. Silva said about pretty nearly similar to what I did—that he did not think it would pay him to ship the ore.

Q. Why?

A. Because it was hard ore, and the best of the ore would be a certain amount, and the second class would not pay to ship.

Q. Do you remember whether Silva told them that they would make it a failure or success if they endeavored to ship that ore?

(Objected to by complainant as leading.)

A. If I remember rightly, I think Mr. Silva did tell them that he would lose money to ship the ore.

1190 (Counsel for complainant moves to strike out the answer on the ground that it is immaterial and irrrelevant, and that the witness has given his thoughts and not the facts.)

Q. Did Silva tell him that on that visit to the mine?

(Objected to by complainant as leading and prompting.)

A. Yes; he told him that because that was the only time that I was there when Mr. Yerington and Mr. Forman were there in company.

Q. Was there any conversation between Mr. Yerington and Mr. Silva and yourself, in the town of Darwin, on that day after you returned from the mine?

A. Yes; there was some conversation.

Q. State what it was, with reference to the sale of this mine.

A. Mr. Yerington and Mr. Silva went into my room and had a conversation together for some time; afterwards Mr. Yerington called me and said, "Mr. Eddy, I want you to hear what I have got to say to Mr. Silva. I am offering Mr. Silva ten thousand dollars for this property and he says he will not take it." Mr. Yerington says, "However, as soon as I get these samples assayed I will make you an offer, anyway, whether you take it or not." Then he asked Mr. Silva for some papers concerning the mine, and Mr. Silva went and got the papers and gave them to him. I think that is about all the conversation there.

Q. Did Silva say anything to Mr. Yerington when he spoke about offering ten thousand dollars to him? What did Silva say?

1191 A. He said he would not take it. I believe I mentioned that before.

Q. Did Silva at that time make any remark about having had an offer similar to that?

(Objected to by complainant as immaterial and irrelevant.)

A. I could not say for certain whether the remark was made or not at that time.

Q. Do you know what work was done by Silva on that mine after he worked this ore chamber?

A. He sunk this No. 1 winze.

Q. How far did he sink it?

A. I think it is the same depth as it is now.

Q. Did he commence at the mouth or top and sink it down the entire distance?

A. No; below the 38-foot level.

Q. He commenced at what point?

A. It might be a little below this and it might be on a level with it.

Q. Through what kind of rock, if you know, was this winze No. 1 sunk from the 38-foot level—hard or soft?

A. Hard rock—blasting rock—all the way.

Q. What would it cost, about, per foot, to sink that winze through rock of that kind and character?

A. I think fifteen dollars per foot.

Q. What work was done below the 38-foot level besides sinking winze No. 1?

A. There was some drifting done.

Q. He ran some drifts there. Does this model represent the drift or a portion of the drifts that he ran?

1192 A. This looks much like the drift.

Q. Do you know how far Silva run that drift marked "4" on the model before selling the mine to Mr. Yerington?

A. I should judge 40 or 50 feet.

Q. Does this figure "6" on the model represent a drift run by Silva before the sale of the mine?

A. Yes, sir.

Q. Do you know what was the length of that drift?

A. Probably 25 feet.

Q. What would be the cost of running 4 and 6 through rock of the character they were run in?

A. About $8 per foot.

Q. Do you know, Mr. Eddy, why that work was performed by Silva that you have last described, the drifts and the sinking of winze No. 1?

A. I understood that it was done for the purpose of cutting the ore body that came down from above.

Q. The ore body in the ore chamber No. 8?

A. The same body of ore.

Q. Were you acquainted with the mine during all this time that Mr. Silva was engaged in working on it?

A. I have been in the mine several times.

Q. During the time he was prosecuting the work on the lower levels which you have described?

A. Yes, sir.

Q. Did you see him engaged in working on this 82-foot level?

A. Yes, sir.

Q. How long before the sale of the mine had you seen him working on that 82-foot level?

A. That will tax my memory; I am not positive.

1193 Q. Think about it.

A. I could not remember.

Q. About how long before was it; two years before?

A. No, sir.

Q. Was it a year before?

A. I do not think it was.

Q. Was it six months before?

A. It might be three or four months; I could not positively say.

Q. Was not Silva working on these lower drifts at the time Mr. Bliss and Mr. Woods went down and visited the mine?

(Objected to by complainant as immaterial and irrelevant.)

A. I was not there at the time and could not say positively.

Q. You do not know positively when Silva did quit working on the lower level?

A. I do not know positively; I never made any memorandum of it, and I cannot say positively that he did.

Q. Are you acquainted with S. D. Woods?

A. Yes, sir.

Q. When did you know him?

(Same objections by complainant.)

A. I think the first time I met Mr. Woods was in 1883 some time.

Q. What was Mr. Woods' business at the time you knew him?

(Same objections by complainant.)

A. He was going up through that country looking up some borax claims.

Q. Do you know whether he has any profession or not?

1194 (Same objections by complainant.)

A. I think he is a lawyer by profession.

(Counsel for complainant moves to strike out the answer on the ground that it is immaterial and irrelevent and the witness is not a judge of whether Mr. Woods was a lawyer or not.)

Q. State if you do not know if he was a lawyer or not.

A. I know he has taken cases in the courts.

Q. And practiced law in this county?

(Objected to by complainant as leading.)

A. Yes, sir.

Q. Did you ever have any conversation with Mr. Woods in regard to this property?

(Objected to by complainant as immaterial and irrelevant.)

A. No, sir; I have had correspondence with him about it.

(Counsel for complainant moves to strike out the answer as immaterial and irrelevant.)

Q. For whom was Mr. Woods acting in the correspondence with you in regard to this mine, if you know?

(Objected to by complainant as immaterial, irrelevant, and incompetent, for the reason that it is not shown that the witness knows whether Mr. Woods was the agent of the Southern Development Company or not.)

A. In this correspondence he said he was authorized——

(Counsel for complainant moves to strike out the answer
1195 on the ground that the correspondence is the best evidence of what was said, and, further, that the correspondence is incompetent and immaterial.)

Q. I asked you for whom Mr. Woods was acting when he communicated with you in regard to this property, and if you know for whom he was acting state how and why you know he was acting for some person.

(Objected to by complainant on the ground that he should first be asked if he knew for whom he was acting or whether he was acting for the Southern Development Company; that the question is compound and should be divided.)

A. I understood in this correspondence that he was acting for Mr. Yerington.

(Counsel for complainant moves to strike out the answer on the ground that it is incompetent, for the reason that it does not appear that he was the agent of the Southern Development Company, and that it is immaterial and irrelevant.)

Q. Did you ever have any conversation with Mr. Yerington in regard to Mr. Woods' connection with this matter?

A. Mr. Yerington spoke to me something about Mr. Woods at the time that he was at the mine.

Q. State what it was.

A. He stated that he would not allow Mr. Woods a $500 commission that he was looking for, and he said, "If you will allow it you can." I said I did not own the mine. He said, "You can tell
Mr. Silva he can pay him the $500 commission if he wants to;
1196 I will have nothing more to do with him. I took him to Cerro Gordo; he got drunk and I let him go."

Q. When was it that you received the first communication from Mr. Woods in regard to this property?

(Objected to as immaterial, because it is shown he was not the agent of Mr. Yerington or authorized to speak or act for the Southern Development Company in any manner.)

A. The correspondence will speak for itself what day it was.
Q. Do you recognize this letter (handing letter to witness)?
A. Yes, sir.
Q. From whom did you receive it?
A. From S. D. Woods.
Q. Where were you when you received it?
A. San Francisco.
Q. Was this the trip to San Francisco that you have mentioned when you met Mr. Yerington on the train?
A. Yes, sir.
Q. Was that the first letter that you received from Mr. Woods?

(Objected to as immaterial, irrelevant, and incompetent, on the ground that neither the sender nor the witness are shown to be the agents of the Southern Development Company or of any of the parties.)

A. I think this was the first letter concerning this affair.
Q. Did you ever meet Mr. Woods personally?

1197 (Objected to as immaterial, irrelevant, and incompetent, for the reason that it is not shown that Mr. Woods had any authority to speak or act for the Southern Development Company of Nevada.)

A. I have met Mr. Woods several times.
Q. Did he ever represent himself to you as the agent of Mr. Yerington or of the Southern Development Company?

(Objected to on the ground that it is immaterial and irrelevant, and that the declaration of the agent is not the evidence of his authority to act as agent for the complainant.)

A. He told me he was under Mr. Yerington's employ.

(Counsel for complainant moves to strike out the answer on the ground that it is immaterial, irrelevant, and even his declaration does not show he was the agent.)

Q. Did he say for what purpose he was under his employ—anything connected with this sale?

(Objected to by complainant as leading, immaterial, and irrelevant.)

A. No; I had no personal talk with him about this sale until this suit was brought.

(Counsel for respondent offers the letter referred to in evidence.)
(Objected to by complainant on the ground that it is irrelevant, immaterial, incompetent, and that it is not shown that the writer
1198 was the agent of the Southern Development Company or in any way authorized to speak and act for it, and on the ground

that the person to whom it was sent is not shown to be the agent of the respondent, and on the further ground that the letter could not be the basis of a contract, for the reason that the writer was endeavoring to act for both parties—that is to say, attempting to act for a purchaser and seeking a commission from the seller, which would be unlawful and could not be the basis of a legal contract.)

(The letter is marked "Respondent's Exhibit Q," is read in evidence, and is as follows:)

1199 "Virginia and Truckee Railroad Co., Carson and Colorado Railroad Co.

"Paymaster's office; Geo. T. Mills, paymaster.

"CARSON, NEVADA, *Nov.* 12, 1883.

"John Eddy, Esq., 108 Davis St., S. F.

"DEAR SIR: I come to Carson this a. m. I write to ask you if an offer of $10,000 cash will get Frank Silva's mine. I can get no higher bid and can almost assure an immediate sale at that price, and I think it is enough. In case of a sale I would expect at least $500 commission, as I have worked hard on the proposition. Please answer at once, and address me at Independence. Please don't fail to see Mr. Miller.

"Very truly yours, S. D. WOODS."

Q. For whom were you acting at the time you received this communication?

(Objected to by complainant as immaterial and irrelevant.)

A. For Mr. Silva.

(Objected to by counsel for complainant on the ground that it was a transaction regarding real estate, and the evidence of his authority should be in writing, and no writing has been offered to show his authority.)

Q. Did you ever show this letter to Mr. Silva?

1200 (Objected to by counsel for complainant as immaterial and irrelevant.)

A. Yes, sir.

Q. When did you show the letter to Mr. Silva or communicate its contents to him?

(Objected to by complainant as immaterial and irrelevant.)

A. After I got back from San Francisco.

Q. Did Silva make any reply?

(Objected to by complainant as immaterial and irrelevant.)

A. Yes, sir.

Q. What was it?

A. To write to Mr. Woods and tell him he could have the property for twelve thousand five hundred dollars.

(Counsel for complainant moves to strike out the answer as irrelevant and immaterial.)

Q. Did you write to Mr. Woods to that effect?

(Objected to by complainant as immaterial and irrelevant, it not appearing that Mr. Woods was the agent of the Southern Development Company.)

A. Yes, sir.

Q. Look at that letter and see if you recognize it (handing a letter to the witness)?

A. Yes, sir.

Q. Did you receive that letter?

A. Yes, sir.

Q. About what time did you receive it?

A. Some time in December.

Q. Through the mail?

A. Through the mail, I believe.

Mr. MINER: I offer this letter in evidence.

1201 (Objected to by complainant on the ground that it is immaterial and irrelevant, for the reason that it is not shown that S. D. Woods, the writer, was the agent of the complainant in this action or authorized to speak or act for it in any manner; that he does not profess in the letter to be the agent of the Southern Development Company, the complainant herein, and that his declaration of his agency for Mr. Yerington is not evidence of such fact.)

(The letter is marked "Respondent's Exhibit R," is read in evidence, and is as follows:)

"Virginia and Truckee Railroad Co., Carson and Colorado Railroad Co.

"Paymaster's office; Geo. T. Mills, paymaster.

"CARSON, NEVADA, *Dec.* 14, 1883.

"MY DEAR EDDY: I hoped to see you in Carson yesterday or today. I telegraphed for you to meet me here and rec'd in reply the telegram I enclose. As I knew you would see Mr. Yerington on the train, I was not as much disappointed as I might have been. Mr. Y. is the party who authorized me to offer $10,000. That offer is still good, and I want to see you soon about it. Please write me at Independence on receipt of this, and greatly oblige me.

"As ever, truly yours, S. D. WOODS."

Q. Did you reply to that letter?

(Same objection by complainant.)

1202 A. I think I did.

Q. Do you recognize this letter and did you receive it; if so, when (handing a letter to the witness)?

A. Yes, sir; I received that.

Q. About when?

A. Some time the same month; just immediately after the other one, I think.

Q. Did you receive all these letters previous to Mr. Yerington's visit to the mine?

A. Yes, sir.

Q. Were the two letters, Exhibits "Q" and "R," and this letter which I now hand you all received prior to the 1st day of January, 1884?

A. Yes, sir.

(Respondent offers the letter in evidence.)

(Objected to by complainant on the ground that it is incompetent, irrelevant, and immaterial, and it is not shown that S. D. Woods was agent of the complainant herein.)

(The letter is marked "Respondent's Exhibit S," is read in evidence, and is as follows:)

"INDEPENDENCE, *Dec.* 18, '83.

"John E. Eddy, Esq.

"DEAR SIR: Yours rec'd. I have sent your letter to Mr. Yerington, and will go and see him on Monday and write you from Carson. Hold Silva till I answer.

"Yours truly, S. D. WOODS."

Q. What letter does Mr. Woods refer to in this letter, wherein he states "I have sent your letter to Mr. Yerington?"

(Objected to by complainant on the same ground.)

1203 A. He referred to a letter that I had written him telling him that this mine was to be sold and he could have it for twelve thousand five hundred dollars.

Q. Did you have any conversation with Mr. Yerington whereby you knew he had received this letter which you have mentioned?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. Yes, sir; Mr. Yerington told me he had received my letter sent by Mr. Woods.

Q. The same letter Mr. Woods refers to in this letter, "Exhibit S?"

(Same objection by counsel for complainant.)

A. The same letter.

Q. What did Mr. Yerington say in regard to the matter?

A. I do not know that he said anything in particular, any more than that he had received the letter I had written to Mr. Woods.

Q. Do you know a man in this community by the name of J. T. Thompson?

(Objected to by complainant as immaterial and incompetent.)

A. Yes, sir.

Q. Look at this letter and see if you recognize it, and see if you know by whom it was written and whether you received it (handing a letter to the witness).

A. Yes, sir; I received this letter. It is written by J. T. Thompson.

Q. Look at that letter and state whether you received that
1204 at the same time and enclosed in the same letter with this letter which you identify as being from J. T. Thompson (handing a letter to the witness).

(Objected to by complainant as leading.)

A. This is the same letter that was enclosed with the other one.

Q. These two letters you received together enclosed in the same envelope from what party?

A. From J. T. Thompson.

Q. Who wrote this other letter which you have mentioned as being received in the same envelope?

A. It is Mr. Woods' writing.

Q. It is a letter of March 1st, 1884, to Mr. Thompson, signed S. D. Woods?

A. Yes, sir.

(Counsel for respondent offers the letter in evidence from J. T. Thompson to the witness.)

(Objected to by complainant on the ground, first, that it is incompetent, immaterial, and irrelevant for the reason that Thompson is not shown to be the agent of the Southern Development Company nor authorized to act or speak for it in any manner; second, that it was written after the sale of the property, and that it is hearsay.)

(The letter is marked "Exhibit T," is read in evidence, and is as follows:)

1205 "DARWIN, *March 10th*, 1884.

"J. C. Eddy, Esq.

"DEAR SIR: I enclose a letter from S. D. Woods to me that will explain itself. I spoke to Silva and he refused to pay the commission, but could give no good reason for doing so. He certainly should pay it, for you know but for the work Woods done the sale would not have been made. Silva promised to see me again about the matter, but has not done so, and I understand has gone out to his mine; at any rate, I have to return to Reilly this morning. In case Silva concludes to do the fair thing & pay the commission please send half to Woods and keep my half.

"Yours truly, J. T. THOMPSON."

(Counsel for respondent states that Exhibit "T" is offered in connection with the letter of March 1st, 1884, from S. D. Woods, which counsel now offers in evidence.)

(Objected to by complainant as incompetent, irrelevant, and immaterial and hearsay, and that the assertions of authority from Mr. Yerington or the complainant herein are not evidence of such authority, and that it was a self-serving letter on the part of Woods and in an effort to establish a claim against Mr. Silva, and that it is

not shown that Mr. Woods was the agent of the Southern Development Company, the complainant.)

(The letter is marked "Respondent's Exhibit U," is read
1206 in evidence, and is as follows:)

"INDEPENDENCE, *March 1st*, 1884.

"My DEAR THOMPSON: It has stormed so since I got your letter that I have delayed writing until now. In reference to sale of Silva mine I will say it is consummated, but I am not able to say whether Silva will pay commission or not.

"Several months ago Mr. Yerington authorized me in Carson to offer $10,000. I obtained his consent to obtain, if possible, $500 commission from Silva. I made the offer through John Eddy, and reiterated the offer time and again. I at last received from Eddy a letter saying that Silva would not take less than $12,500, and that out of that he would pay $500 to me. I sent the letter to Mr. Y, and went to Carson to insist that he make another examination of the mine, and presented in figures in detail that no loss could follow the purchase of the mine. Mr. Y. consented and did at once make the examination and made an offer of $10,000, which was accepted. Ever since Mr. Bliss & Forman's examination last summer I have persisted in my efforts to have R. R. folks buy. Mr. Miller knows how earnest were my efforts in that behalf. Now, whether Silva will pay the $500 or not I cannot say. He should pay it, as he sold to my parties. See Eddy and him and say what I say, and get the $500; ½ belongs to you if obtained. Please attend to this at once and advise me. Mr. Y. always understood that I should have the commission if Silva would pay it. Write me soon.

"As ever, S. D. WOODS."

1207 Q. At the time of Mr. Yerington's visit to the mine did he know that you had received the letters from Mr. Woods marked "Q," "R," and "S," being the three letters written by Woods to you?

(Objected to by complainant as incompetent, irrelevant, and immaterial.)

A. He certainly must have known his correspondence with me.

(Counsel for complainant moves to strike out the answer of the witness on the ground that it is not responsive to the question and is not a statement of fact.)

Q. State why Mr. Yerington must have known that Mr. Woods was corresponding with you previous to his, Yerington's, visit to the mine in regard to this sale of the mine.

(Objected to by complainant as incompetent, irrelevant, and immaterial.)

A. Mr. Yerington told me that he received my letter that I wrote to Mr. Woods; I stated that once before.

Q. Did Mr. Yerington state at that time or any time to you that during the time Mr. Woods was corresponding with you in regard to this matter that he, Woods, was not his agent?

(Objected to by complainant as leading, immaterial, irrelevant, and incompetent; that a failure to negative an authority on the action is not evidence of the authority or agency of Woods.)

A. No, sir.

Q. As a matter of fact, did Mr. Silva ever pay Woods a commission on the sale of that mine?

1208 (Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. Not that I know of.

Q. Was Mr. Woods to receive any commission if the mine was sold for any figure less than $12,500?

(Objected to by complainant as irrelevant and incompetent.)

A. My understanding was that he was to get nothing unless he got $12,500.

(Counsel for complainant moves to strike out the answer as irrelevant and immaterial, and that the witness has not stated a fact, but a conclusion.)

(Recess to 2 p. m.)

1209 *Afternoon Session.*

(Counsel and parties met pursuant to adjournment.)

J. C. EDDY recalled.

MR MINER:

Q. Look at this paper now handed to you and tell me if that in any way represents any portion of the mine during your visit to it when Mr. Yerington was there.

(Objected to by complainant, first, on the ground that the paper is not in evidence, and, second, that the question is leading.)

A. A portion looks like it; the other portion——

Q. I ask you if it looks anything like it at all?

A. It does in the bottom portion of it. This part, when I was there——

Q. I ask you if it looks like it at all. Does it in any way represent the mine or any part of it?

(Same objections by complainant.)

A. It represents a portion of the ore body when I was there.

Q. Now you may represent on that piece of paper, in addition to the figures that are on it, any other lines that you desire to place there representing some other portion of the mine, and mark the points that you make in addition.

1210 A. On the southwest of this there was more excavation, coming something like that (describing).

Q. Mark that with some letter.

(Objected to by complainant as unintelligible.)

A. I will call it "M."

Q. What does the letter A represent on this diagram?

A. It looks like, to me, the 38-foot level, running between No. 1 and No. 2 winze.

Q. What does the figure marked B represent?

A. It looks like a ladder of some description.

Q. Would that represent the ladder on which you went down into the ore chamber substantially about where it was?

(Objected to by complainant as leading.)

A. We had a short ladder there.

Q. Would that figure there represent about the way in which that ladder went down?

A. I think I testified before we had a ladder some six feet and went down in the ore chamber.

Q. Would this ladder here illustrate about where the ladder was?

A. Very nearly.

Q. What would the point C represent on the figure—this little square place?

(Objected to by complainant as irrelevant, immaterial, and leading.)

A. By the looks of that it represents the little hole that was sunk.

1211 Q. The little shaft that was sunk in that chamber?

A. You can call it a shaft or hole.

Q. Would it represent the same point as represented on model, Respondent's Exhibit F, marked 14?

A. Pretty nearly the same.

Q. What would the point D represent—this figure, apparently going down?

(Objected to by complainant on the ground that counsel is making these figures himself and leading the witness. He first makes them in the presence of the witness and then asks the witness what they represent. It is not a diagram made by the witness, but is being made by counsel.)

(Counsel for respondent states that the only figure made by himself in the presence of the witness was the "D," as there was no mark there at that part of the figure.)

A. I want to ask a question myself.

Mr. REDDY:

Q. You do not know what it represents?

A. Let me ask a question. I want to know if it represents anything at the time of the sale or the present?

(Counsel for complainant objects to the witness asking questions. If it does not appear to him to represent anything about the mine he should say so.)

Mr. MINER:

Q. Does it represent anything about the mine at any time in your life when you ever saw the mine?

A. Yes; it represents a portion of winze No. 2, below the
1212 38-foot level. I supposed you were asking me these questions at the time of the sale.

Q. I will ask you the questions and if you do not understand them let me know and I will explain them to you. Can you designate on this diagram a north and south line?

(Objected to on the ground that the diagram is not in evidence nor filed for reference. We object until the diagram is offered in evidence or filed as an exhibit.)

Q. Draw a line that would represent, according to your ideas, a north and south line on that diagram?

(Same objections by complainant, and also that it is immaterial and irrelevant.)

Q. If it will assist you in any way you can look at Respondent's Exhibit F to find north and south.

A. How can I tell by the model? I have not got a compass here to look at it.

Q. Please look at the model and see if it assists you in determining north and south.

A. I do not think I can. I do not know that there are any lines of the compass there to assist me.

Q. If the point marked "N" on the model represents true north, please show me on that diagram which is north.

(Objected to by complainant on the ground that it is leading, and on the ground that the witness is asked to assume that the diagram indicates north and south.)

1213 A. I should do it in this way (marking on the diagram).

Q. Which would be north? Mark the letter N showing north and the letter S to show south. These dotted lines between N and S represent on this diagram north and south, as you think?

A. Yes, sir. I wish I was a surveyor. I would have made a survey and told you all about it.

Q. When you go to a place have you any idea which is north and which is south?

A. I do not often take descriptions.

Q. In which end of the ore chamber, according to the compass, would you place the little shaft there which you saw at this visit?

A. A little place, as far as I know, on the southeast end.

Q. In the chamber?

A. Yes, sir; I think I have said that three or four times.

Q. Look at the diagram; you have placed north at the point N and south at the point S; now, would this bring the little excavation C in the southeast corner of the chamber?

A. I think it would.

Q. Let us mark west and east on this and see if it would. What was the distance from the point C to the point B, at the foot of this ladder, at your first visit with Mr. Yerington?

(Objected to by complainant on the ground that the witness
1214 is being examined on a diagram which is not filed as an exhibit in the case, and on the further ground that it is leading.

(Counsel for respondent offers the diagram in evidence in connection with the witness' testimony to illustrate his evidence with respect to the size and dimensions of the ore chamber at the time of the visit of Mr. Yerington and the witness.

(The diagram is marked "Respondent's Exhibit V.")

Q. What was the width of the chamber at the time of your visit, at the end of it which contains the little shaft at the point C, the width from the northeast side to the southwest side, from a point which I will mark "1?"

(Counsel for complainant objects to counsel putting any marks upon the paper. If any marks are to be made they must be made by the witness, so as to know what changes are made.)

Q. Show me the different dimensions of the chamber and mark the paper from one point to another point and designate the distance.

A. I would mark it this way, from the northwest corner to the southeast corner.

Q. Put in the number where you point. Cannot you put in No. 1 here and No. 2 and tell the distance from place to place?

A. Cannot tell you what I think the points are?

Q. Is there anything to designate what the points are unless you mark them?

A. What figures do you want?

Q. Commence with No. 1; designate it in your own way,
1215 commencing at one point and going to another. Please tell me the width of the chamber at the end of the chamber, which has the little excavation marked C on the diagram.

A. At what time?

Q. At the time of your visit with Mr. Yerington.

A. I will mark "1" *of* the northwest corner, "2" for the southeast corner. At the bottom of the winze I should say it was about six feet, and in opposite directions about 4.

Q. What opposite directions do you mean from?

A. We will take it from northwest to southeast and take the distance from northeast to southwest.

Q. Northest to southwest is how much?

A. Four feet.

Q. Please mark it in some way so as to show what that distance is.

A. I will mark the hanging wall "3" and the foot wall "4," a distance of about four feet.

Q. What was the height of the chamber from the point C to the 38-foot level, where the latter connected with the 38-foot level; in

other words, about how far above the little shaft marked C was the 38-foot level at the point where the ladder connected with it?

A. As the incline is sunk it would be a distance of 16 or 17 feet.

Q. Was that portion of the chamber on which the ladder came down and rested on an incline from the 38-foot level down to the little shaft marked C on the diagram?

A. Certainly it was an incline.

Q. What was behind that ladder at the time of this visit
1216 with Mr. Yerington—back of it?

A. There was ore.

Q. Upon what did the bottom of the ladder rest, if anything?

A. The foot of the ladder rested upon ore.

Q. Point on the diagram and mark the place that you can remember from which samples were taken by both Mr. Yerington and Mr. Forman, commencing with the figure "5," and mark the different places.

A. As far as I can remember, Mr. Yerington commenced about this point and went along here, where I mark "5," "6," "7," and "8."

Q. Did he take any sample at the point marked C?

A. Yes; I will mark it "9."

Q. Mark any other place that he took samples.

A. No other place in the ore chamber.

Q. Did he take any back of the ladder?

A. This was partly back of the ladder. "7" and "8" are partly back of the ladder; probably 8 would be entirely back of it.

Q. How many samples, if you know, were taken out at the point marked 9?

A. Only one, I think.

Q. Were there any samples taken out between the little shaft marked C and the foot of the latter, marked B?

A. I could not say for certain; they might possibly have taken several samples; I could not say how many.

Q. Besides those you have mentioned?

A. I do not remember; they might, possibly, and they might not; I could not say.

Q. Have you visited this mine since it was sold by Silva
1217 to the Southern Development Company of Nevada?

A. Yes; once.

Q. When did you visit it?

A. On June 7th.

Q. In company with any one?

A. In company with John Alexander, Charles Anthony, Frank Silva, and Frank Fitzgerald.

Q. State the result of your examination of the mine, if you examined it. Use your own words.

A. We examined the portion below the 38-foot level, went into this portion which they call the ore body, found the floor of the ore body stood about twenty feet below the bottom of the 38-foot level.

Q. Is that ore that you have referred to represented on the model by the figure 8 in the ore chamber?

(Objected to by complainant as leading.)

A. It looks a pretty good model of it.

Q. State the result of your investigation as far as seeing any ore there or not seeing any ore.

A. In this ore chamber, we went in there and investigated it. I found on the foot wall there was about three feet of ore running above the 38-foot level, then from a portion I should judge about nine feet from the bottom of the platform of the ore body.

Q. Is that represented on the model as the body of this ore chamber, figure 8?

A. I answered that a moment ago.

Q. I do not know what you refer to by a platform.

A. A platform is a level place where you can stand on or
1218 walk over.

Q. Is that represented on the model?

A. Yes, sir; I said a few moments ago that I thought this was a fair model of it.

Q. Nine feet above the platform, or the bottom of this ore chamber, what did you see?

A. I see a bunch of ore that turned over towards the hanging wall, and it ran down level with the bottom of the platform of the ore chamber, and as I designated on, on the southwest side it shows about twenty inches of ore.

Q. Is there any ore in the 38-foot level?

A. Yes, sir.

Q. At what places?

A. In different places.

Q. Describe them, so that we may know.

A. In the roof of the 38-foot level I found ore.

Q. What was the width of the ore body on the 38-foot level?

(Objected to by complainant as assuming that there are ore bodies on the 38-foot level. The witness has not said so.)

A. Just above the opening of this ore body from the 38-foot level above I think the best judgment that I can get upon it is that there was about two and a half feet of ore.

Q. What distance through that level did it extend?

A. It extended about, probably, twenty-five feet between No. 1 and No. 2 winze.

Q. Are you acquainted with the hole in that mine designated as the Modoc hole?

A. Yes, sir.

Q. Is it represented upon this model at any place? If so, state where.

A. This looks very similar to it.

1219 Q. What is that marked?

A. It looks like No. 9.

Q. Does that No. 9 represent about the place where the Modoc hole is?

A. Pretty near, I should judge.

Q. Is that sunk down from the 38-foot level?

A. Yes, a short distance.

Q. About what is the size of that hole?

A. About three or four feet long and about that in width.

Q. What is the depth of it from the level down to the lowest part of it?

A. Do you mean perpendicularly?

Q. Yes, sir.

A. Probably six feet.

Q. In what direction does the hole run from its mouth down to its lowest end—what pitch has it, if any?

A. I should judge it run southeast.

Q. Did you find anything down there in the shape of ore, in that Modoc hole, in the southeast end?

A. I have seen ore there two feet wide in the southeast end, and in the northeast end there was a pretty fair ledge, but not much ore in it.

Q. At or near the point in the chamber represented on the model by the figure 14 did you see anything in the shape of ore?

A. How do you mean?

Q. Was there any ore in that part of the chamber in the end of the chamber marked 14 on the model—call it the southeast end?

A. Below this platform or above it?

Q. Inside of its walls. If so, point out what place.

A. There was a streak of ore that came down from a certain distance here.

1220 Q. Coming down from the northeast side?

A. On the hanging-wall side of the chamber, running right to the edge of this hole marked 14.

Q. What was the width of it at the place where it ran down to the little point marked 14 on the model?

A. I calculated it to be about twenty inches.

Q. Did you examine this southwest end of the chamber on the other side of the little hole marked 14?

A. Yes, sir.

Q. Did you find anything there in the shape of ore?

A. Not much.

Q. Did you find any there?

A. It showed very little.

Q. Now, was this a continuous streak from this little shaft marked 14 up and into the 38-foot level?

A. Yes, it is a continuous streak.

Q. Do you know what the dip or pitch of that ore body was and what it is? Just describe the ore that extended from the little shaft in the ore chamber up and across the northeast side of the chamber, what pitch did it have—what dip.

A. From what point?

Q. Inside of the chamber, on this side of the chamber marked No. 8, on the northeast side of it, where it is marked No. 8 on the model—what was the pitch or dip of that ore?

A. I just now answered that there are two strata here, one toward

the foot wall and one toward the hanging wall, and the hanging-wall streak has got more pitch than the foot-wall ore streak has.

1221 (Counsel for complainant moves to strike out the answer on the ground it is not responsive to the question.)

Q. What is the pitch of the ore body at the point named?

A. I never had any instrument in it. I judge, probably, it would be about forty degrees.

Q. In what direction?

A. Northeast.

Q. Did it have the same pitch up in the 38-foot level?

A. In the 38-foot level it appears to go straighter up.

Q. In what direction?

A. It does not carry as much pitch.

Q. Did it pitch in the same northeast direction?

A. At the 38-foot level there is a wall there and an ore body alongside of the wall, and it appeared to pitch in a different direction for a certain distance and afterwards it turns and dips northeast again.

Q. How does the ore that you saw on this visit in June, 1886, in that mine compare in character with the Exhibits G to M examined by you and filed in this case by the respondent?

A. I think they are the same ores; but the quality you have got here would be a better quality, taking the whole body of ore as it stands.

Q. There is more low-grade ore than high-grade ore in the mine?

A. Yes, sir.

Q. Have you described all the places in the mine that you examined the ore bodies in during this visit in June, 1886?

A. No; I visited the northwest drift.

Q. Did you examine the upraise from the southeast drift near winze No. 1?

A. Above the 38-foot level?

1222 Q. Above the north drift.

A. Yes, sir.

Q. Give us full details of your visit without my asking you any questions.

A. I visited the northwest drift. I found ledge matter in places all through it mixed with some ore and iron and other different materials. In one place there is a little upraise there of about fifteen feet long and containing about six inches of low-grade ore. I visited the end of the drift, found no ore in it, and it looked favorable. Afterwards we visited this excavation which they call the sleeping-room. There I found from four or five feet up to fourteen or fifteen inches of pretty fair, good ore; that is the last place I visited.

Q. Does that place that you call the sleeping room connect with the drift from the main tunnel?

A. No, sir.

Q. Did you visit an upraise near winze No. 1 in the southwest cross-drift from the main tunnel level?

A. No, sir.
Q. Do you remember an upraise from winze No. 1?
A. I remember it.
Q. Did you see it?
A. I did not examine it. I held the light up. It looked about the same as when I was there before.
Q. You looked at it?
A. I did not examine it.
Q. What was the size of the mouth of that upraise?
A. I could not tell you.
Q. Was it a foot?
A. Yes, sir.
Q. Then tell us, about.
A. When I cannot tell you the size I cannot tell you.
1223 Q. Was it six feet long or about; was it the size of that window over there?
A. I should judge it was four or five feet.
Q. Did you see ore there in it when you raised yo ur candle up and looked?
A. I have seen some ore. On the end of the upraise we could not see.
Q. Did the ore chamber present any difference in its appearance, so far as size is concerned, between your visit with Mr. Yerington in 1884 and your visit of 1886? If so, describe the difference in your own words.
A. I found it was some deeper and considerably larger.
Q. State wherein it was deeper and wherein it was larger or higher.
A. The depth of it from the 38-foot level down was some deeper, and both in the length and width of it — was longer. It was longer and wider each way than it was when I was there before.
Q. What was the difference in the bottom of the chamber from the time of your first visit? We will call the ladder marked B on the diagram B as the foot of the inclined winze at the time of your visit. Describe the difference between that side upon which the ladder rested and that side at the present time during your visit.
A. At the time that I was there in the first visit with Mr. Yerington this ladder rested on ore. Now the ore is taken away.
1224 Q. Does this Respondent's Exhibit F substantially represent the looks of the chamber at the present time, leaving out this piece of white paper marked 15 that is in the chamber at the place marked 8 on the model?
A. It looks very much similar to it.
Q. Then the bottom of this chamber now is about flat, is it not?
A. Pretty nearly so.
Q. At the time of your first visit it was not flat, but in the northwestern end of it it was covered with ore, was it not; how was it?
(Objected to by complainant as leading.)
A. I think I have described that before.
Q. Calling the point on the model where the little shaft is No. 14,

as the southeastern end, going from that up to the other end of the chamber at the point marked P—from this point marked 14, going up in this direction towards the point marked P—the chamber was an incline, was it not, on your first visit?

(Objected to by complainant as leading, and that the ground has been gone over several times by the witness.)

A. It was on an incline.

Q. If I understand you, back of the ladder marked B on the diagram all that has been dug out so as to leave the bottom of the chamber flat, as represented by respondent's model and the figure 8 on the model?

(Objected to by complainant as leading.)

1225 A. Yes; it has been worked right down to this level where it stands now.

Q. About how many feet has been taken out since your first visit, in 1884, to June, 1886, in order to make the bottom of this chamber flat as it represents itself to your view now?

A. I should judge about eight or nine feet.

Q. Since your visit in January to June, 1886, how many feet have been taken off of the sides of this chamber from the northeast side to the southwest side in order to widen it out to its present appearance?

A. I think there is about seven or eight feet widened out.

Q. Take the chamber lengthwise, from the figure 14 through the chamber, this way, to this end marked P, how many feet have been taken out of that since your visit in January, 1884?

A. I think about the same thing; about seven or eight feet.

Q. Did you take any samples out of this mine when you visited it in June, 1886?

A. I did not take any myself.

Q. On your visit in June, 1886, did you examine the bottom of the little hole marked 14?

A. Yes, sir.

Q. What was the bottom composed of?

A. Composed of a mixture of ledge matter, lime, and other material—quartz.

Q. You know when Silva sold this mine, *did* you not, and the circumstances of his selling it?

A. I know the circumstances of his selling it.

1226 Q. Do you know how much money he received in cash?

(Objected to by complainant on the ground that the amount of money received is admitted by the pleadings, being $2,500 in cash and a certificate of deposit.)

A. $2,500 in cash and $7,500 in a certificate of deposit.

Q. Do you know what Silva did with his $2,500?

(Objected to as immaterial and irrelevant.)

A. He paid me a portion of it.

Q. How much?

(Same objections by complainant.)

A. He made me, I think, three payments.

Q. About how much altogether did he pay?

A. About $1,200.

Q. Was he owing you that amount of money at the time?

A. Yes, sir.

Q. Do you know whether he paid any one else any more of this money besides you? If so, state.

A. He paid some to some party in Fresno county, I think.

Q. How much?

A. I could not tell you the amount; I handled the money, but could not say the amount.

Q. Have you any idea whether it exceeded $300 or not?

(Same objections by complainant and, further that it is leading.)

Q. How did you handle the money—privately or as the agent for Wells, Fargo & Company?

A. Privately.

Q. How was the money sent?

A. It was sent by Wells, Fargo & Company, I think; I am
1227 not positive.

Q. Have you a recollection of about the amount of that money, whether it was less than $100 or not?

(Objected to by complainant as immaterial and irrelevant.)

A. It was more than $200; I could not say how much above it; I knew at the time, but I never made a memorandum of it, and I do not know that I ever thought of it from that day to this.

1228 Cross-examination:

By Mr. REDDY:

Q. You have known Mr. Silva from 1868 up to the present time, have you not, Mr. Eddy?

A. Yes, sir.

Q. Do I understand you to say that you have known his reputation from 1868 up to the present time?

A. Yes, sir.

Q. Have you ever heard his reputation for truth, honesty, and integrity mentioned or discussed in any way from the day you first knew him until the present time?

A. Yes, sir.

Q. Have you entered into that discussion yourself?

A. Yes, sir.

Q. Have you not yourself denounced him as a dishonest man, a liar, and a thief?

(Objected to as not being in cross-examination and as immaterial, irrelevant, and incompetent.)

A. I have never denounced him as being dishonest. I said at different times he never did what was right, especially to myself.

Q. Have you not discussed and talked with Mr. Anthony about Mr. Silva; and have you not stated to Mr. Anthony that he acted a damned rascal to you, and you believed him to be dishonest?

A. No; I never had that talk with him. I have talked with Mr. Anthony about it and he said he acted wrong and he ought to have paid his debts when he had the money to pay them. I have often reiterated the same statement.

Q. You have heard other people say the same thing?

A. Yes; I have heard other people say the same thing.

Q. Is it not the fact that you stood up in front of Frank
1229 Silva one day in Darwin and called him, and continued to call him for at least two hours, everything that you could think of that was opprobrious and every name you could think of which would designate him as a man dishonest and contemptible, using frequently the words "son of a bitch;" that he was a liar; that he was a thief, and that he had acted dishonestly with you?

(Objected to by respondent as irrelevant, incompetent, immaterial, and not being in cross-examination; calls for the private opinion of the witness on other matters outside of this case; does not touch the general character of the respondent in this action, and if it is for the purpose of impeaching the witness and showing he has made statements at other times inconsistent with statements made here the attention of the witness has not been called to the parties present; the conversations have not been stated to him, nor has the time when said conversations were alleged to have taken place been mentioned.)

A. I know I abused the man there, because he did not do right to me; but as for calling him a thief I do not think I ever did.

Q. Did you not call him a scoundrel?

A. There is no doubt I used many hard words.

Q. You meant what you said at the time?

A. I certainly did.

Q. And was prepared to back it up at any hazard, because
1230 you believed it so strongly, and would have backed it with your life?

A. I would be liable to try.

Q. Is it not the fact that you stood right there and made use of those words, believing what you said to him was true so firmly that you would have ventured your life on that issue?

(Same objection by respondent.)

A. I considered that he did wrong to me, and I abused him for it. What would happen afterwards if it came to anything I could not tell, but it did not happen.

Q. You believed what you said to such an extent that you were ready to venture your life on the issue?

A. If it came to a certain point I would.

Q. You expected to have to venture it when you talked that way to a man?

A. That is the case.

Q. A man in that country when using such words towards another would naturally expect that he was venturing his life upon the issue, would he not?

A. Yes; that is the general supposition.

Q. The reason why you talked this way to him was because he had not acted fairly, like a business man, and honestly with you in paying his debts. Was not that the reason why you talked to him in that way?

(Objected to by respondent on the ground that it is immaterial, irrelevant, and incompetent, calling for the judgment and opinion of the witness, and does not tend to show the general reputation of the respondent in this action, is not cross-examination, and assumes and leads the witness to say something not in evidence; it is
1231 leading and not in cross-examination.)

A. That was the reason why.

Q. The majority of the people in Darwin knew what you had said to him at that time? Nearly every one in town heard what you said to him and of him?

A. I suppose they heard it all.

Q. Was it not generally reported to be the fact in Darwin, and was it not regarded as the truth, what you said to him at that time?

(Objected to by respondent on the ground that it is not preceding the commencement of this action that the conversation was alleged to have taken place; that it is not in cross-examination, is leading, and when such questions are asked the witness should not be led, because it is an examination of other matters not brought out on the direct examination, is not confined to the general reputation of the respondent preceding the commencement of this action.)

A. At the time there were some parties who kind of condemned me, and told me they thought I talked too hard of the man.

Q. That is, simply too hard in telling him of it; that you were too rough on him in telling him it to his face in that public manner?

A. In using such language as I did.

Q. Do you not think a majority of the people believed what you said; a majority of those living in the community stood with you?

A. I do not know what their belief was. I suppose the majority pretty well knew the circumstances as I did myself.

1232 Q. And knew the real ground-work of the thing was right?

A. It was almost public and almost every one knew it.

(Counsel for the respondent moves to strike out the answer, and objects to the evidence as irrelevant, immaterial, and incompetent.)

Q. I will ask you where Mr. Silva lived from 1877 until the beginning of 1884?

A. He was away two or three times.

Q. Where did he go to?

A. I think he was in Nevada a portion of the time.

Q. Do you know anything about him in Nevada?

A. No; I do not know his transactions there.
Q. How long was he absent in Nevada?
A. I could not say positively; I think a few months once.
Q. Something like a year?
A. I do not know whether it was as long as that; I rather think not as long as that.
Q. In that neighborhood?
A. Some six or seven months.
Q. He was away another time?
A. Yes, sir.
Q. Where was he at that time?
A. He was at San Francisco. In fact, he was away several times.
Q. How long was he at San Francisco?
A. I could not tell. He was at Bakersfield at one time.
Q. For how long?
A. A week or two.
Q. How long a time do you think he was away from that section of the country from 1877 until the beginning of 1884?
A. I judge the whole time together would be over a year.
1233 Q. Considerably over a year, would it not?
A. I do not know.
Q. Did he not work awhile out at Keeler during that period of time, and at Cerro Gordo? Did he not go back from Cerro Gordo to Darwin and work there a considerable time?
A. I do not remember. He went to the Indian Queen and worked there quite awhile.
Q. How far is that?
A. 150 or 200 miles.
Q. How long was he off then?
A. Some seven months.
Q. You know nothing about his doings or his reputation during that period, do you?
A. I do not.
Q. How long did he live at the Stirling mine between 1877 and 1884?
A. He must have lived there a considerable length of time.
Q. Did he not make it his home, with the exception of the time he was out at Nevada and at other points distant from Darwin?
A. Yes; I think he worked around Darwin some of the time, too.
Q. His home was at the Stirling mine?
A. Yes, sir.
Q. How far is that from Darwin?
A. 9 miles.
Q. Is it not as much as 10 miles?
A. No, sir.
Q. That is another community entirely? Darwin does not reach out that far?
A. They consider themselves as belonging to Darwin.
Q. Is not the Stirling mine at least 9 miles from any other town or village?
A. It is 9 miles, almost, from any other place.

1234 Q. And the major portion of Mr. Silva's time was spent out at the mine during the time that you have assigned him to Darwin; is not that so?

A. Yes, sir.

Q. At the Stirling mine—who was there during that period of time that Mr. Silva was there?

A. He had a man; sometimes one man and sometimes two, and I think as high as three.

Q. His relation to Darwin would be that of going in to get supplies for himself and men?

A. Certainly; his business point would be Darwin.

Q. His business would amount to buying his groceries and supplies for that mine, where he worked one man and sometimes two or three besides himself?

A. Certainly.

Q. There was nothing during that period of time to bring in question Mr. Silva's reputation or to call attention to him in any way?

A. He was just the same as any other miner. Some man might make a remark one day: "I wonder how Frank Silva is getting on?"

Q. Nothing was said about his honesty, but just how he was getting on?

A. That is all.

Q. Up to 1884 you never heard anything said about his honesty and integrity one way or the other?

A. No, sir.

Q. And knew of nothing to call it in question? The business men of the community had no interest in knowing whether he was honest or dishonest, so far as you knew it?

A. I never heard it, if they had or not.

Q. You spoke of the way in which a reputation is made
1235 up. Have you had any talk with Mr. Miner as to what you would be called on to testify with reference to reputation and what it consisted of prior to being placed on the stand?

A. No, sir.

Q. Your idea is that it consists of what a majority of the people of the community where the party lives has to say about him or their opinion about him?

A. I believe that is the testimony I gave.

Q. You think a man's reputation is established by the majority?

A. It ought to be.

Q. How many people have there been in Darwin, on an average, from 1877 to 1884?

A. I do not think I made a statement of that.

Q. What would be an average of that?

A. That would be hard to tell.

Q. One hundred people would be as much as they would average through each year?

A. I should think they would.

Q. If there were one hundred people in Darwin in each year and fifty-one thought that Silva was a man of honesty and integrity and

forty-nine thought he was a thief, you think his reputation would be good because the majority thought he was an honest man and a man of integrity?

A. I do not think I would.

Q. Suppose that seventy-five should think he was an honest man and twenty-five felt sure he was a thief, would you come to the conclusion then that he was a man of good repute?

A. That is a ground; a man would have to try and prove his honesty or thievery.

1236 Q. I am asking you about your idea of what reputation is and how it is established in a community. You say you think a majority establishes a reputation one way or the other, good or bad. I ask you if seventy-five men, where the community consisted of one hundred, should express the opinion — was an honest man and twenty-five should feel equally sure he was a thief, would you regard him as having an established reputation for truth, honesty, and integrity?

A. That is a very hard question to answer.

Q. That is the reason I put it. Now, give us your judgment on it, because it is by that that we can ascertain your real meaning.

A. If I had a certain number of men that I knew I could depend upon what they said and they could show me proof that a man had been dishonest I certainly should take their word for it.

Q. What you have been saying here about Mr. Silva being a man of honesty and integrity up to 1884 is from your own experience and dealing with him?

A. From my own experience with him, and in that camp I never heard any person speak anything else.

Q. That is, up to that time?

A. Yes, sir.

Q. Since that time you have heard a good deal?

(Objected to by respondent as not being in cross-examination, immaterial, irrelevant, and incompetent, leading, and an examination of the witness upon other matters not brought out on the direct.)

A. I have heard different men say the grounds were that everybody in that part of the country always treated him as
1237 a gentleman, and when he had money he ought to pay them.

Q. Counsel was very particular to ask you as to his reputation up to 1884. That would mean up to the beginning of the year 1884. You said that his reputation, as you understood it, was good up to that time. Since that time his reputation has changed— that is to say, you have heard a great deal about him since?

A. His reputation in this one circumstance alone has changed a little.

Q. Did you not become his surety for the payment of $500 to Harris & Rhine, of this town, at a time when he wanted to use $500 in this litigation, and did he not represent to you that he had money in Europe which he expected to receive in a short time and with which he would pay this $500?

(Objected to as not being in cross-examination and as immaterial, irrelevant, and incompetent; that the time is not mentioned nor the circumstance; that the question is leading, being an examination as to matters not brought out on the direct examination; that the complainant is not entitled to ask leading questions; that the witness should be treated as his own, and the questions should not be leading in their character.)

A. Myself and another man went security for five hundred dollars to Harris & Rhine.

Q. State whether any representations were made to you and your cosurety at that time by Silva as to his receiving money from Europe and being able with that money to make this payment?

A. Silva did not make any representations to my cosurety,
1238 but he did to me.

Q. What did he say to you?

A. I went security for ninety days. He told me he only just wanted me to go security; that he would have money here within ninety days to pay it.

Q. Where from?

A. Europe.

Q. State whether you afterwards found those statements to be true or false.

A. The money did not come.

Q. Did you find his statement to be true or false?

(Objected to by respondent that it is leading, not in cross-examination, and it assumes that Silva's statements were untrue, when at the time said statements were made by Silva he may have believed said statements to be true, and may have had reasons for believing them to be true.)

A. His statements were wrong.

Q. Were they true or false?

(Same objection by respondent.)

A. False.

Q. Did you have to pay the money?

A. I did.

Q. He told you at the time what he wanted the money for, I understand?

A. He said he needed it to pay it out.

Q. In the litigation with the Southern Development Company?

A. I suppose he needed it for that.

Q. Did he say what he wanted it for?

A. He said he wanted it to pay some of his attorneys.

Q. You have been practically putting up money to carry on this litigation and paying the attorneys for the defendant, have you not?

A. I do not think I have.

1239 Q. In fact; I do not mean by intention. You paid that five hundred dollars which he said he wanted to pay to his attorneys?

A. I loaned it to him.

Q. It was money to carry on litigation and pay his attorneys.

A. He paid it out to whoever he pleased.

Q. You understood he wanted it for this purpose. He gave you to understand that at the time he got you to go security?

A. That is the way I understood it.

Q. You have had some difference with Mr. Yerington, have you not, about freight, etc.?

A. Not with him personally.

Q. Through the railroad company, and of course you understand that he is the head of their business, do you not, and directs the business?

A. Certainly.

Q. And considerable enmity has sprung up between yourself and Mr. Yerington after this litigation?

A. There was some.

Q. Mr. Yerington refused the checks of your firm for freight?

A. He refused my own checks.

Q. Which vexed you, your checks always having been current in the country and taken as good. It vexed you considerable with his company?

A. I did not like it on one ground, because I was just about one in several. He would take checks from others and would not from me.

Q. There has been enmity more or less existing between Mr. Yerington and yourself?

A. On the freight proposition, there has.

Q. It had grown into something like a personal thing, from the fact that he would take other people's checks and would not
1240 take yours, when your credit was as good as anybody's and as good as those whose checks he received?

A. It looked like personal on his part, and I was dealing with a corporation.

Q. You were annoyed by it and vexed?

A. I do not know I was vexed very much. It put me to trouble.

Q. You do not feel as well towards Mr. Yerington as if he had treated you as he did other persons and as if you had no business difference with him?

A. I did not feel as well.

Q. You take more interest in this suit against the Southern Development Company than you would have otherwise taken had you been on perfectly good terms with Mr. Yerington?

A. I think not.

Q. You take a very great interest in this matter with Mr. Silva?

A. Certainly.

Q. You at one time held the certificate of deposit for Mr. Silva?

A. It was in my safe for quite a long while and I did not know it.

Q. It was in an envelope. You knew it belonged to Mr. Silva?

A. I did not know what was in it.

Q. You finally found out?

A. Yes, sir.

Q. Eventually you learned what was in the envelope; that it was the certificate of deposit that has been mentioned here for seventy-five hundred dollars?

(Objected to by respondent on the ground that it is not in cross-examination and is irrelevant, immaterial, and incompetent.)

Q. When did you deliver that certificate of deposit to Mr.
1241 Silva, if you ever delivered it to him?

(Objected to as irrelevant, immaterial, and incompetent and not in cross-examination; that the question is leading, and assumes that the certificate was delivered, and assumes that the witness had the certificate, and by these questions the witness is made the complainant's witness in this action and should be questioned as if the witness was a witness for the complainant and should not be led.)

A. Mr. Silva asked me for the envelope that I had in the safe. I went to the safe, got it, and delivered it to him the same as he delivered it to me—closed.

Q. When was that?

A. I could not remember.

Q. What month was it in?

(Same objection by respondent.)

A. I could not say what month it was in.

Q. What year was it in?

(Same objection by respondent.)

A. In 1884 or 1885.

Q. What part of the year?

(Same objection by respondent.)

A. It must have been in the beginning part of the year; what part I could not say.

Q. Was it before or after the arrest of Silva on the criminal charge?

(Same objection by respondent.)

A. I could not swear to it. It was somewhere around there; whether before or after I could not say. I do not remember; I have no dates for it.

1242 Q. Do you not know the day the sheriff went out to Darwin and arrested Frank Silva that you had that certificate of deposit then in your possession?

(Same objection by respondent.)

A. I do not.

Q. Do you not know you swore to it on the former trial?

A. I might possibly.

Q. Do you not know you swore you did not deliver that certificate of deposit until long after the preliminary examination of Frank Silva on the charge of obtaining the purchase price of the Stirling mine now in question in this action by false and fraudulent representations?

(Same objection by respondent.)

A. I could not tell you now whether it was before or after; it might have been before.

Q. Who was present when you delivered the certificate to Mr. Silva?

(Same objection by respondent.)

A. I do not know that any one was.

Q. You know you did not deliver it to him before he was arrested?

(Same objection by respondent.)

A. I am not positive of it.

Q. Cannot you fix the time?

(Same objection by respondent.)

A. I cannot.

Q. Cannot you tell whether you delivered it after or before the preliminary examination?

(Same objection by respondent.)

1243 A. I could not possibly state.

Q. Have you not stated to various persons in this town after the preliminary examination in this case that you then had the certificate of deposit in your possession?

(Same objection by respondent, and the further objection that if this question is asked for the purpose of impeaching the witness the parties present and to whom statements were made different from his present testimony should be stated by the witness and the time given when he made such statements, so that he may be allowed an opportunity to explain the same. If asked for any other purpose the evidence is immaterial, irrelevant, and incompetent.)

A. I think not. Probably Mr. Silva could tell you the day and date he got it better than I can.

Q. Do you not remember having been notified not to deliver that certificate to Frank Silva or any one else?

(Same objection by respondent.)

A. Yes, sir.

Q. By whom were you notified?

(Same objection by respondent.)

A. I think by Mr. Conklin.

Q. How were you notified?

(Same objection.)

A. By a card, I think, or something of that description.

Q. What reply did you make to it?

(Same objection by respondent, and also if the notice is in
1244 writing the writing is the best evidence of what it purported to state.)

A. I do not think I made any reply.
Q. What time did you receive that card?

(Same objection by respondent.)

A. I could not say.
Q. Where did you receive it?
A. At Darwin.
Q. How?
A. I think by mail.
Q. Do you not know Frank Silva had been arrested before you received that card?
A. I do not; it might have been before or after; I could not say for positive.
Q. If you could see a copy of that card or notice and the date fixing it you would then be able to state?
A. I think there is a possibility that I have got the card at home.
Q. Have you got it here with you?
A. No; I have not.
Q. How long did you keep the certificate after that time?
A. I could not tell you; I answered a moment ago I was not positive whether I delivered it before or after.
Q. How long did you hold the certificate after you received that notice from Judge Conklin?
A. I am not positive whether I had it at that immediate time; I might possibly have had it and might not; if I had thought any of these questions would come up I would have taken notice of it and been able to say something more about it.
Q. When was the certificate placed in your hands?

(Objected to on the ground that it is immaterial, irrelevant, incompetent, and not in cross-examination.)

1245 A. It was some time after Silva came down from Carson.
Q. How long after?

(Same objection by respondent.)

A. I could not say the exact time; it might be a few days or a week or two.
Q. Was the certificate endorsed when you gave it to Silva?

(Same objection by respondent.)

A. I could not say.
Q. Did you look at it at all?

(Same objection by respondent.)

A. I did not; not at that time.
Q. At any time before you parted with it?
A. I never looked at it before I parted with it myself.
Q. Were you or not one of Mr. Silva's bondsmen after he was arrested?
A. Yes, sir.
Q. You became surety for him for his appearance before the committing magistrate, did you not, after his arrest?

A. Not at the first trial; after the first.

Q. After the preliminary examination—after he was bound over?

A. Yes, sir.

Q. You came here, then, to Independence and signed that bail bond?

(Objected to by respondent on the ground that the bond is the best evidence.)

A. I signed a bond.

Q. Where?

A. I am not positive whether it was here or at Lone Pine; one or the other; I signed the bond, I know.

Q. That was after the preliminary examination?

A. Yes.

1246 Q. Had you seen Frank Silva from the time he was arrested in Darwin and brought over here to stand his examination about the time you went on that bail bond?

A. I might have seen him the night before.

Q. But only the night before?

A. It might be two nights.

Q. All the time that he was in Independence after his arrest up to that time you had possession of that certificate of deposit, did you not?

A. I think not.

Q. Do you not know that you told several people that you had that certificate of deposit up to that time; did not you tell as many as a dozen in this town and in Darwin, and do not you know that you did not deliver that certificate to Frank Silva until after he went back to Darwin and you became bail for him?

(Objected to by respondent on the ground that it is not in cross-examination and that it is leading; that if it is for the purpose of impeaching the witness the parties' names in whose presence the conversation took place and with whom it was had has not been stated to the witness, nor the place where it was stated, nor the time when it was stated, nor has the witness been allowed an opportunity to explain the same if he made such a statement, and the evidence is immaterial, irrelevant, and incompetent.)

A. I think not. I did not have it at the time.

Q. Did you give it to him immediately after his arrest or before his arrest?

(Same objection by respondent.)

A. I am not positive which.

1247 Q. Do you not know you had it at the time he was taken from Darwin and brought over to Keeler? Search through your memory.

(Same objection by respondent.)

A. I cannot tell you for certain. If I knew that I did I would say so. It was something I made no memorandum of. Possibly I gave it to him before or after, I am not positive which.

Q. You visited the Stirling mine, you say?
A. Yes, sir.
Q. What is the kind of rock which is found in that mine?
A. Chiefly lime.
Q. Lime is what you would call the country rock?
A. Yes, sir.
Q. What do you call vein, or deposit, or lode, or ledge, whatever it may be, if either of them?
A. I call it lead ore.
Q. When you speak of the vein what do you include—all between the walls?
A. That is the principal part of the vein, the ore——
Q. I am not talking about ore. I have not got to that question yet. You seem to be anticipating your cross-examination on that line which I have not touched. I ask you what you call the vein; all that is included between the country rock—all that lies between the country rock?
A. What I call the vein is the material that lies between the hanging wall and foot wall.
Q. It is lime on the foot wall?
A. Yes, sir.
Q. It is lime on the hanging wall?
A. Yes, sir.
Q. You call all the material between the walls which makes up the vein——
A. Ledge matter.
1248 Q. What is the color, generally speaking, of that matter which lies between the foot and hanging wall?
A. It is generally different colors.
Q. Different colors?
A. Yes, sir.
Q. What is the general appearance; is it ferruginous or not?
A. Its general appearance?
Q. Reddish, iron cast of color?
A. Reddish, iron, and dark; it may possibly be a mixture of white lime intersected with it.
Q. What is the width of the vein, if there is a vein, between the surface and the Stirling tunnel level?
A. There is a width there from an inch to six or seven feet.
Q. What is the gangue in that vein?
A. The gangue is composed more of iron mixed with lime and other different material of rock.
Q. What other?
A. I cannot possibly describe the names of it; it is a kind of a mixture.
Q. What is the color of that gangue and iron rock?
A. It is chiefly a dark color.
Q. Dark red?
A. In certain portions kind of streaks run through it, and some of it is darker than others.
Q. It is a dark red?

A. It is a dark color, some of it; some is vermilion, others is a dark red, a deep red, and a mixture of colors.

Q. Of what thickness is the gangue, as you have seen it in
1249 the mine, in the section named, between the surface and the tunnel?

A. It is almost impossible to answer such a question as that. In some places it is an inch or two, in other places a foot to six feet; it is mixed through the ledge.

Q. Mixed with what?

A. The gangue is mixed with ore.

Q. Which stands in the greatest proportion, the gangue or the ore?

A. There are some points where the gangue is the biggest proportion; the other points the ore is.

Q. How do you distinguish the ore from the gangue in that red iron rock?

A. By the looks of it.

Q. Can you distinguish in that vein, by the looks, the ore from the gangue?

A. Yes, sir.

Q. You are positive of that, are you?

A. Yes, sir.

Q. Now, you have described the gangue and you say that in some places the ore is of greater thickness than the gangue. In what points in the section named does that state of things exist?

A. At that time there was more ore below the 30-foot level.

(Counsel — complainant moves to strike out the answer as not being responsive to the question.)

Q. At what point does the condition of things which you have described exist—that is, between the tunnel level and the surface?

A. There is more gangue than there is ore between the tunnel level and the surface.

Q. That is so all the way through?

A. As far as I have seen.

Q. What is the average width of the vein from the tunnel up?

1250 A. It would probably average 14 or 15 inches.

Q. Now, of that average how much should there be?

A. As far as I have seen of it, there ought to be six inches of ore.

Q. Average all the way up? What kind of ore?

A. Chiefly carbonate ore.

Q. In averaging the ore you count the ground that has been opened, do you not, to get that quantity of ore that you have spoken of? You count all of the openings as a place where ore was taken out, do you not?

A. Yes; and from what you can see in sight more.

Q. I am asking you now if you do not give credit to that section of the mine, for all the open spaces, as having been ore?

A. Not all of the open spaces.

Q. I do not mean the shape of it; I mean simply the opening. You give credit to that section of the mine, do you not?

A. To certain portions of it. There may be some portions that will not carry ore—that is, enough to pay; other portions will.

Q. For what distance along the vein has that mine been worked between the tunnel level and the surface?

A. I should judge from about 70 feet.

Q. Is that the length of the chute?

A. You mean below the tunnel level?

Q. From the tunnel level up?

A. I think it is a distance of about 70 feet.

Q. Is that the length of the ore chute?

A. I should judge so.

1251 Q. What proportion of the vein has been taken out from the tunnel level up? When I speak of the vein I mean all between the walls. What proportion has been taken out?

A. That is a question pretty hard to answer.

Q. You have estimated the quantity of ground that has been taken out and what remains, if you made an examination?

A. On the ore body, I judge, there was not one-half.

Q. Leave ore bodies alone. When I ask you about the ore bodies it will be time enough for you to speak. What proportion of the vein—we have already had an understanding about what that means—we mean all between the walls without reference to ore—has been taken out?

A. I would judge probably one-half has been taken out—that is, on the ore chute from the surface down.

Q. The workings show that the parties have gone in there looking for ore and working to take out ore; is not that the fact?

A. Yes, sir.

Q. What has been left there is ore, scattered about in bunches or spots here and there through the vein matter; is not that so?

A. There is ore in different places there.

Q. It is scattered about in the vein matter?

A. There is ore in the vein matter in different places there.

Q. That is the way the ore appears now in the works?

A. That is the way it appears in the works.

Q. Very much scattered and diffused through the vein matter?

A. You can find it scattered through the vein matter; in some places it is thicker than others.

1252 Q. Generally it occurs in bunches and modules; you find the modules fixed in the vein matter?

A. In my experience, in almost every mine.

Q. We want to find out about this mine; I want to get at the condition of things in that section of the mine.

A. More ore in some places than in others.

Q. Is it usual to determine what is and what is not ore out of that mass of vein matter which remains?

A. It is very usual for a man that is used to it.

Q. Can you tell what quantity of ore you can take out in any of those stopes by stoping without first breaking the ground and then assorting the ore out of the vein matter?

A. No; it is an impossibility to tell that.

Q. You do not pretend to say, then, what particular quantity of ore that is available in the section of the mine referred to from the tunnel level to the surface?

A. I cannot say the amount available, because I do not pretend to look in the rock.

Q. When did you examine the section of the mine that I have been talking to you about?

A. It is some time since I examined it.

Q. When was it?

A. It is over two years ago.

Q. You did not examine it on the occasion of this visit?

A. No, sir.

Q. You examined it, I apprehend, at the time you were there with Mr. Yerington and Mr. Silva, did you not?

A. I did not — through these places.

Q. I understand you never visited the mine after the sale to Yerington until June the 7th, this year.

1253 A. I did not.

Q. Then you were not there since you visited it with Mr. Yerington before the sale?

A. No, sir.

Q. Did you examine it at that time?

A. No, sir.

Q. How long before the sale was it that you examined it?

A. I cannot say; I examined it and looked over it several times before the sale.

Q. I mean before that time?

A. I could not say the exact time; I looked over it several times after I bought the ore from Mr. Silva.

Q. You never have examined it since the time you were there with Mr. Yerington when he was about purchasing the mine?

A. I have answered that several times.

Q. Answer it again, then.

A. I have not examined above the tunnel level.

Q. You speak of the appearance of that section of the mine prior to the time when Mr. Yerington went in there and worked that section?

A. Yes, sir.

Q. What its appearance was after Mr. Yerington quit there and had worked you do not know?

A. I do not know; I do not know how it appeared; I was told that——

Q. You know better than that; you do not want to tell us what other people told you. Have you been at the point of location since you visited the mine with Mr. Yerington?

A. Yes, sir.

Q. When?

A. On June the 7th.

Q. Did you go into the cross-cut there or the open cut?

1254 A. Yes, sir.

Q. Did you look down a little shaft sunk down seven or eight feet?

A. Yes, sir.
Q. You found a shaft running down from the floor?
A. I found one, I guess, about 6 or 7 feet.
Q. You say you saw some galena above and to the west?
A. To the northwest.
Q. Which looked very promising?
A. Yes, sir.
Q. Was that a part of the streak which runs through the cross-cut?
A. I think it was; it is continuous.
Q. Then that little shaft down there in the cross-cut shows that that vein does not go down?
A. There is some ledge matter in it.
Q. But there is no ore?
A. I could not see any.
Q. That shaft prospects fairly the croppings and the ore that you saw to the west and above the point of location?
A. I do not think it does.
Q. How far is it distant from that shaft following the vein?
A. The vein on the surface pitches entirely different.
Q. I ask you the distance from the little shaft to the point of croppings that you speak of?
A. If you were to cross-cut it, it would not be over four or five feet.
Q. I ask you the distance following the stratum?
A. Probably fifteen or twenty feet.
Q. It is only about fifteen feet to this point. Do not you think a shaft down on the same vein, within fifteen or twenty feet of a streak of ore on the surface, fairly prospects that streak, so far as its going down is concerned?
1255 A. Not where this shaft was sunk. I would not think it would.
Q. In what shape is this galena that you speak of?
A. It is in spots through the lead?
Q. Spotted through the vein rock?
A. Yes, sir.
Q. No well-defined streak?
A. Nothing very regular about it.
Q. It is an irregular spotting of the vein rock with lead?
A. With heavy galena.
Q. You have seen that at various points in the ledge?
A. Not with very heavy galena.
Q. Did you not see some galena over in the sleeping department?
A. Yes; there is some galena there.
Q. That was a heavier spotting than what you saw at the croppings?
A. More regular.
Q. You followed that down into the lower works?
A. No, sir; that does not connect with the lower works.
Q. Are the croppings which you find at the point of location the vein? Do you consider that the top of the vein that is worked down, which is followed down in the tunnel level, into the 38-foot level? Do you consider that all the same vein?

A. I think it belongs to the cropping.
Q. It is all the same vein?
A. Every appearance of it.
Q. Do not you consider the works between the tunnel level and the surface fairly prospects that ground?
1256 A. Below this point of location I do not think it does. There are no works as far southeast as that.
Q. If these works which you have described as running up from the tunnel level to the surface are on the same vein with the croppings which you have described at the point of location and other points how can it be that it does not fairly prospect it when you run it from the surface clear down to the tunnel level?
A. Because the prospecting was done from the tunnel level. It runs away from these croppings at the point of location.
Q. What is the dip of the ledge?
A. I could not say.
Q. In which direction does it dip?
A. Northeast.
Q. That is the course of the croppings, is it not?
A. That is the course of the croppings.
Q. Then you followed from the croppings right down to the tunnel level?
A. Certainly; but at the commencement of the croppings you start further southwest.
Q. You think you have the vein there in winze No. 1 and No. 2?
A. I think so.
Q. That is, the same vein that you see above that vein has been followed from this winze clear up to the surface?
A. Yes, sir.
Q. Does not that prospect the vein from there to the surface?
A. Some portion of it.
Q. You say it is prospected for a distance of about 70 feet along the vein, and from there up to the surface, and you are of the
1257 opinion that 70 feet is about the length of the ore chute at that point; that fairly prospects that ore chute?
A. Yes, sir.
Q. We have been talking of but one ore chute. Are you talking about another?
A. I was talking about the first ore chute until you got over to these croppings.

(A recess was here taken until Tuesday, June 22nd, 1886, at 9.30.)

1258 TUESDAY, *June 22nd*, 1886.

(Counsel and parties met pursuant to adjournment.)

J. C. EDDY recalled for further cross-examination.

Mr. REDDY:

Q. You have described the ground above the Stirling tunnel level. Have you examined the mine below that level?
A. Below the tunnel level?

Q. Yes.
A. Yes, sir.
Q. When did you make that examination last?
A. On June the 7th.
Q. At the time of your examination, on June the 7th, 1886, did you examine any other portion of the mine than that lying below the Stirling tunnel level?
A. No, sir.
Q. Were you with Mr. Alexander and the persons you have named throughout the examinations which they made on the 7th of June, 1886?
A. Yes, sir.
Q. You all visited the same places and made the examination together?
A. Yes, sir.
Q. Did you have any books in which to enter the places visited by you and the conclusions which you reached as to the quantity of ore at each point?
A. Each one had a book.
Q. Who furnished those parties with the books?
A. I did.
Q. Where did you furnish them with the books?
1259 A. At Darwin.
Q. Before going over to the mine?
A. Yes, sir.
Q. Why did you furnish them with books?
A. I supposed that each man wanted to take a memorandum of what he had seen in the mine.
Q. Did you all make the same memoranda in your books?
A. I do not know.
Q. Did you not examine the books afterwards?
A. No, sir.
Q. At each point that you visited did you discuss it and come to a conclusion as to what was to be seen there in the way of ore—its thickness and general appearance?
A. We discussed the matter at points where there was ore.
Q. State whether you all came to the same conclusion at each point.
A. I do not know what conclusion the others came to.
Q. From the discussion, was there any agreement as to what there was in sight?
A. There was no agreement, because we all acknowledged that each man should take his own judgment.
Q. Did each man express his judgment at the time?
A. We talked it over, but when we came to the measurement of it each man put in his book what he thought was right.
Q. They were all the same, were they not; you heard no disagreement as to measurement?
A. I do not know if they were all the same or not.
Q. Did you hear any disagreement? Each man expressed his

opinion as to the width and so on as to the ore in each point of the mine as you passed along?

1260 A. There was some little difference in discussing it. One party might say this is two feet or three feet and the others might say it was more or less. What the conclusion was, each one took his own conclusion.

Q. At each point each man, having examined and discussed the matter, would out with his memorandum book and by the light of the candle put down his conclusions as to what was to be seen at each point?

A. Yes, sir.

Q. And so you went through the mine?

A. Yes, sir.

Q. How many of you were there with memorandum books?

A. Three.

Q. Have you those books?

A. No, sir.

Q. How many have you?

A. I have got my own.

Q. State whether any of the parties made any actual measurement of the width of ore at any of the points which you visited and examined.

A. We did not make any measurement by a rule.

Q. It was simply an estimate of the width?

A. An estimate. At some places I put my hand over it in this way, and came pretty near telling what it was.

Q. Did any of the others put their hands over it?

A. I suppose they measured it according to their own judgment.

Q. Did you see what they did?

A. I did not notice.

Q. I will go back to the time when you were at the mine with Mr. Yerington, prior to the sale of the mine by Mr. Silva, in making your examination of the ore chamber. Could you

1261 do it by natural light, or were you compelled to use candles in making the examination below the tunnel level?

A. I had to use candles.

Q. Complete darkness would prevail without the aid of candles?

A. Yes, sir.

Q. Whatever you set down there, then, was by the light of candle or candles?

A. Yes, sir.

Q. Did you go down into the chamber at the time Mr. Forman and Mr. Yerington were making their examination?

A. Yes, sir.

Q. Are you sure?

A. Yes, sir.

Q. While they were there examining the chamber were you down there with them?

A. Yes, sir.

Q. In the chamber?

A. Yes, sir.

Q. Whereabouts did you stand?
A. At different places.
Q. Did you go all through the ore chamber?
A. I went nearly all through it. I do not think I went quite to the very bottom.
Q. Did you make any examination of the chamber at that time?
A. Not at that time.
Q. You did not visit the mine again until June the 7th?
A. No, sir.
Q. Had you previously visited the chamber?
A. Yes, sir.
Q. Was it then in the condition in which it was when Mr. Yerington examined it?
A. About the same condition.
Q. I want to know if it was in the same condition?
A. It was nearly so. Mr. Silva was working in it. He
1262 might have taken out a little ore or something.
Q. How long was it before Mr. Yerington's visit that you had visited the ore chamber?
A. I cannot remember the time; probably a month or two.
Q. Did you note particularly whether it was in the same condition when Mr. Yerington visited as it was when you had previously visited it?
A. There was not a great deal of work done; some little.
Q. I asked you if you observed it closely.
A. I observed there was a little work done; not much.
Q. Did you not on the trial of the case of The People of the State of California against Frank Silva, charged with obtaining money under false pretenses, in the superior court of the county of Inyo, State of California, in the month of November, 1884, testify, in answer to the following question: "At the time you made this examination with Mr. Yerington I will ask you if you went to the lower end of this chamber and examined it. A. No?"

(Objected to by the respondent on the ground that if this evidence is for the purpose of impeaching the witness the statement has not been shown to him and he be- allowed to explain the same; that at the said trial the evidence was taken down by a short-hand reporter, and the witness has not been presented with the writing showing his testimony to that effect; on the ground that it is irrelevant, immaterial, and incompetent, and on the further ground that the witness has not testified differently in this action from the said testimony, if he testified to such a thing during that trial.)
1263 (Counsel for complainant states that the short-hand notes of the witness' testimony on that occasion have not been written out.)

Q. Did you not on the trial of the case above mentioned, in answer to the following question, give the following answer: "Did you go there at all?" referring to the lower end of the chamber. "No; I do not think I did." Did you so testify on the former trial?

(Same objection by respondent.)

A. There is not a doubt but I did. I just now testified I did not go to the bottom of the ore chamber.

Q. I am not asking you what you just now testified. That will show for itself. On the trial of that case did you not, in answer to the following question, make the following answer: "To the lower end? A. No, sir?"

(Same objection by respondent.)

A. It is very likely I did.

Q. Did you so testify?

A. It is a good while ago to remember. I do not think I did go to the bottom of the chamber.

Q. Did you so testify on that trial?

A. You are taxing my memory more than I can say. There is no doubt I did. I could not say the very words I testified at that time.

Q. You were testifying then to your recollection, and your recollection would be better of the fact then than it is now, as time makes a difference?

A. It ought to be.

Q. What you said then you knew better than you do now, because two years have elapsed since then?

A. Yes, sir.

1264 Q. Did you examine at that time the bottom or floor of that chamber, and when I speak of the floor or bottom I mean that on which the feet would rest in the chamber while standing there?

A. You mean in the very bottom?

Q. I mean where a man would stand who was in the chamber and examined it; on that on which the man would stand while examining the chamber.

A. As the chamber was at that time, you could stand on several places.

Q. I am asking you now what the bottom was—the floor. What was the floor of that chamber, if you examined it?

A. In the very bottom of this winze?

Q. I mean that on which a man would stand, whether it be the real bottom or not, whether it was loose earth or solid rock. I ask you what was that on which a man would naturally stand in the chamber?

A. On portions of the chamber he would stand on ore. At the bottom there is dirt there, and you could not stand on the bottom; you would stand on the dirt.

Q. I ask you what a man would stand on in that chamber; whether it is solid rock, dirt, or what not?

A. In portions of it solid rock; at the very bottom of it there was dirt there.

Q. What do you mean by the very bottom—the lower end of the winze?

A. Yes, sir.

Q. What was it at the upper end of the ore chamber on the floor?

A. There was ore.
Q. What kind of ore?
A. Carbonate ore.
Q. Was the bottom of that chamber composed of carbonate
1265 ore at the time you examined it?
A. The bottom of it was carbonate ore.
Q. Did you examine it?
A. I examined it.
Q. How?
A. By looking over it.
Q. Where from?
A. From the point I was standing.
Q. Where were you standing?
A. From the bottom of this ladder we have mentioned and a little below it.
Q. You were standing on the ladder while this examination was being made by Mr. Yerington and Mr. Forman?
A. I was standing just below the ladder.
Q. In the chamber?
A. In the chamber.
Q. Did you examine this floor from one end of the chamber to the other?
A. I examined it with a candle and looked all around.
Q. I ask you a plain question and want a direct answer.
A. No, sir.
Q. What part of it did you examine?
A. I examined on the opposite wall, below the ladder.
Q. I am asking you now about the floor or bottom of the chamber and you need not talk about walls. I have already stated to you what I mean by the floor or bottom—that on which a man's feet would rest while standing there naturally in the chamber.
A. I examined where I was standing.
Q. How many feet of the floor did you examine?
A. It might be 8 or 10 feet.
Q. How long was the chamber at that time?
A. I judge some 13 or 14 feet.
Q. Then you examined 10 feet out of 13 or 14 lengthways
1266 along the chamber?
A. Lengthways along the chamber.
Q. For that 10 feet which end would you begin on, the southeast end or the northwest end?
A. The northeast end.
Q. From the northwest end of the chamber for a distance of ten feet you say you examined that floor?
A. Yes, sir.
Q. That floor, I understand you to say, stood at an angle of about 40 degrees?
A. I judge about that.
Q. And did the opening continue down at that angle to the southeast end of the chamber?
A. Pretty near the same angle.

Q. And was there any dirt on the floor?
A. Yes, sir.
Q. How much—how deep?
A. I could not tell the depth of it.
Q. Mr. Yerington, Mr. Forman, Mr. Silva, and yourself tramped over that dirt in the chamber, did you?
A. I do not recollect that I was down as low as that at the time they were. I think I was standing above.
Q. Do you not know as a miner if there was loose dirt in there that it would not stand on the floor if the angle was 40 degrees while you men tramped over it? Would it not all go down into the lower end?
A. No, sir.
Q. It would stand at an angle of 40 degrees and allow four men to tramp over it?
A. In that place it would.
Q. Was the floor of the chamber smooth or rough?
A. Very rough.
Q. Was any portion of it clean, so that you could determine what kind of rock was in it—in the floor?
A. You mean in the lower part of the floor?
1267 Q. I mean in the upper part, the ten feet which you have examined. The four feet you did not examine I am not questioning you about, because I suppose you know nothing about them. I am asking you about the 10 feet running from the northwest end of the chamber.
A. Yes; there is rock clean there and exposed.
Q. For the entire distance of 10 feet from the northwest end?
A. There was very little dirt on it.
Q. I ask you if there was any dirt on it, or whether it was in a condition to be examined, so that you could tell what the rock was?
A. Yes; it was in the condition that it could be examined.
Q. Did you make such examination as to enable you now to state what that rock was?
A. Most part of it was ore.
Q. I ask you if you examined that floor and can state of what kind of rock it was composed?
A. It was vein matter, composed of ore and other material.
Q. What do you call vein matter?
A. I call vein matter material that runs on the ledge composed of different kinds of material between the walls.
Q. What kind of rock was it that you called vein matter? Was it lime rock?
A. There was very little lime rock in it.
Q. Was it lime rock?
A. There might be some little lime in it.
Q. Was it not chiefly quartzite or lime?
A. No; there was some quartzite and some lime.
Q. Was there any ore in the bottom of that floor in place?
A. Do you mean to the very bottom?

Q. I mean anywhere on the floor from the northwest end
1268 of the chamber to the bottom or any place that you examined. Was there any ore in the floor or bottom?
A. Yes, sir.
Q. In place?
A. In place.
Q. What kind of ore was it?
A. Carbonate ore, chiefly.
Q. Was there any other than carbonate ore there that you saw?
A. There was quartzite mixed with it.
Q. What proportion was there of quartzite?
A. I could not say the exact proportion.
Q. I do not ask you for the exact propotion. I want to know whether there was half an ounce of carbonate ore to so many tons of quartzite or how was it?
A. The quartzite was mixed with it in places and spots.
Q. In what proportion? Did the quartzite predominate or did the carbonate ore predominate in quantity?
A. The carbonate ore predominated.
1269 Q. You are sure that you made a careful examination there so that you could not make a mistake about what you have now said?
A. I did not examine it so closely, because I was not there to examine it.
Q. Did you use a pick or shovel or anything else there in the way of an implement or tool with which to examine that floor?
A. I do not think I used any at that time.
Q. Did you use your hands?
A. I might, possibly.
Q. Are you sure you made any examination whatever more than looking at it from the ladder or where you stood?
A. I might have used my hands.
Q. Do you know whether you did make any examination whatever other than simply looking at it?
A. I might, possibly.
Q. I ask you if you did or not?
A. I say I might possibly have pulled down some rock.
Q. I ask you now about your recollection. Do you remember whether you did or not use any tool or implement or make any examination of the floor other than simply to look at it as you passed along or stood there?
A. I could not say for positive whether I used a pick or whether I did not at this present time. It is possible I did or did not.
Q. You do not recollect what you did?
A. I do not recollect about that.
Q. How long were you there?
1270 A. I was there quite a while.
Q. How long?
A. An hour or an hour and a half; I could not say for certain.
Q. Did you stand there in the one position all the time?
A. No, sir.

Q. There was not much room for four of you?

A. Four could not stand there together.

Q. You are sure that the ore which you saw in the bottom of that chamber was carbonate ore, something like the samples that are here?

A. Something similar to them.

Q. You call some of these samples carbonate or partly carbonate?

A. Yes, sir.

Q. Would you call sample G carbonate ore?

A. I think that is one that I call a portion carbonate ore.

Q. Now, you are sure that you examined that floor?

A. I was there and looked over it.

Q. You are sure that you examined it with the view of determining what the bottom was composed of?

A. I did not go there on those grounds to examine the mine at that time—the same as I stated before.

Q. Did you make such an examination as to enable you to state positively that the floor of that chamber was composed of quartzite and carbonate and that the carbonate predominated?

A. I was satisfied in my own mind before then.

Q. When you speak of quartzite and carbonate on the floor of that chamber you mean that it was in place?

A. In place.

1271 Q. And not loose?

A. Not loose.

Q. And the floor was in a condition to be examined, so that any one could tell what it was composed of, who would seek to make an examination, without pick or shovel?

A. As far down as this dirt.

Q. Which was ten feet?

A. Probably.

Q. It was filled in at the southeast end?

A. It might be four or five; I could not tell you; I did not measure. There was some dirt lying there.

Q. Now, Mr. Eddy, did you not testify on the trial to which your attention has been called above as follows, in answer to an inquiry made by Mr. Miner, the attorney for the defendant: "Q. What was there on the bottom of the ore chamber with reference to the time Mr. Yerington and Mr. Forman were making the examination? A. Ore." Did you so testify?

(Objected to by respondent as irrelevant, immaterial, and incompetent; that the testimony of the witness was taken down by a shorthand reporter, and, being in writing, it has not been presented to the witness and he allowed an opportunity to explain the same.)

A. I have no doubt I did.

Q. To the following question did you not give the following answer on the trial referred to: "Q. What kind? A. Galena, chiefly?"

(Same objections by respondent.)

A. I think not.

Q. Will you swear that you did not so testify on that
1272 occasion?

(Same objections by respondent.)

A. It must have been taken down wrong.

Q. Will you swear positively that you did not so testify on the occasion referred to?

(Same objections by respondent.)

A. I think I did not.

Q. Will you swear positively that you did not so testify?

(Same objections by respondent.)

A. I think I did not.

Q. I ask you if you will positively swear that you did not so testify?

(Same objections by respondent.)

A. I do not think I said that.

Q. Will you swear positively that you did not so testify?

(Objected to by respondent on the ground that the evidence has not been presented to the witness; that the testimony was taken down by a short-hand reporter and has not been presented to him, showing what he testified to. The witness is entitled to have the writing presented to him, and if it appears that he has made such a statement he is entitled to an opportunity to explain such testimony, if he gave it. If the object of this testimony is to impeach the witness it must be presented to him and he be allowed an opportunity to explain the same. If for any other purpose this evidence is offered it is irrelevant, immaterial, and incompetent.)

1273 (It is understood that counsel for respondent shall have the benefit of an objection such as above made to each and every question of this character.)

A. No; I will not swear positively, but I do not think I did.

Q. You have given an answer now that you will not swear positively that you did not give such testimony?

A. I still think it is a mistake.

Q. I understand; once saying it is just as good as twenty. Did you not, in answer to the following question, give the following answer: "Q. Why did you not determine what the bottom or floor of that ore chamber was? A. I could not see the bottom." Did you so testify on the trial to which your attention has been called?

A. I have no doubt I did; in the very bottom.

Q. Did you give the testimony as it has been read to you without equivocation or prevarication, or without any change whatever, from the language I have used? Did you so testify?

A. I certainly testified there was a portion of the bottom covered; not all of it.

Q. I ask you again to answer the question which I have just put.

A. Do you mean the whole floor as covered?

Q. No; I will put the question to you and ask you to answer it

one way or the other. Did you not, on the trial of the case of The People of the State of California *vs.* Frank Silva, charged with
1274 the crime of obtaining money under false pretenses from the Southern Development Company, in November, 1884, in this court-room, give the following testimony in answer to the question, "Q. Why did you not determine what the bottom or floor of that chamber was?" Did you not give this answer? "I could not see the bottom."

A. I could not see the very bottom.

Q. Answer the question; did you so testify?

A. There was some bottom that I could not see.

Q. I simply ask you the question and want an answer, yes or no.

A. I cannot answer in that way, because a portion of the floor——

Q. I am not asking you about what the fact was; I do not care what the fact was; I simply ask you if you gave this testimony; it makes no difference what the fact was; did you give the testimony I have just asked you about?

A. I have got to answer the same as before; there is something wrong about the "floor;" the floor was partly open.

Q. I am not talking about the floor, and you are intelligent enough to understand that; did you not, on the occasion referred to, give this answer to this question: "Q. Why did you not determine what the bottom or floor of that ore chamber was? A. I could not see the bottom?"

A. In the very bottom I could not see.

Q. I am asking you if you did so testify.

A. I think not.

Q. Will you swear positively you did not?

1275 A. How am I going to swear to what I said two years ago, to a very word?

Q. That is what I want to find out.

A. I tell you the best I can.

(Counsel for respondent informs the witness that if he does not understand the question that is asked he can say so, and he should be presented with a written statement containing his evidence on that branch and be allowed an opportunity to explain his testimony. If he gave such evidence he can state whether that is correct or not; if he never gave such testimony he can say so; if he did give it and it is wrong he can now explain with regard to that evidence. Counsel for complainant states the fact to be, and will hereafter establish by the short-hand reporter, that the testimony of Mr. Eddy has not been written out in long hand or transcribed, but rests in the notes of the short-hand reporter, which we will hereafter show by him.)

Q. In order that there can be no mistake about this I will ask you again; did you not to this question give the following answer: "Q. Why did you not determine what the bottom or floor of that ore chamber was? A. I could not see the bottom." Did you so testify on the trial referred to or not?

A. I think I did, to the lower portion; above, I do not think I did.

Q. I ask you if you gave the very answer which I have
1276 read to you or stated to you?

A. I do not think I did.

Q. Will you swear positively that you did not give such testimony on that trial?

A. I will not swear positively. I think it is a mistake somewhere.

Q. To the question following the answer just read did you not give this answer: "Q. Why? A. Because I could not see it. I was not working there." Did you give such testimony?

A. That I was not working there?

Q. Did you give all of that answer or any portion of it: "Because I could not see it. I was not working there?"

A. I said before I could not see the bottom of it.

Q. The bottom or floor; did you give such testimony?

A. I think not, the bottom or floor, because there was a portion of it that I could see.

Q. The question was, "Why?" Did you give the following answer to that: "A. Because I could not see it?" The question was concerning the bottom or floor. You said above you could not see the bottom. The next question is, "Why?" Why could you not see the bottom of the floor? Did you not make the following answer: "Because I could not see it. I was not working there?"

A. I could not see the very bottom.

Q. Did you give that answer?

A. I might give the answer, for the very bottom.

Q. Did you give this answer—not another answer—that I
1277 now repeat to you: "A. Because I could not see it; I was not working there;" did you give that answer?

A. I claim I could not see the bottom.

Q. That is not what I am asking. I will repeat to you the answer and ask you if you gave that identical answer, word for word: "Because I could not see it; I was not working there." Did you give that answer?

A. I claim I could not see the bottom.

Q. I am not asking you about what you could see. I am asking you about what you testified on the former trial without reference to whether it was the fact or not. The question is, "Why?" Did you give the following answer: "Because I could not see it. I was not working there?"

A. I might, possibly.

Q. If you did give it it was true?

A. I calculate to tell about as near the truth as I can.

Q. Your recollection was better then than it is now?

A. Most likely.

Q. You knew more about it then than you do now? Time, of course, has affected your recollection of the facts?

A. Certainly I knew more at that time—that is, I would remember more.

Q. Did you not to the following question give the following answer? This was on cross-examination: "Q. And what was the bottom of that chamber composed of, if you know, at the time you examined it with Mr. Yerington? A. Ore." Did you give that answer?

A. There was ore, as far as I could see.

Q. Did you give that answer?

1278 A. I gave that answer.

Q. "In place or loose? A. Loose." Did you give that answer?

A. I think not.

Q. Will you swear you did not?

A. I think a man could positively swear to it without injuring himself.

Q. I ask you now if you will swear positively that you did not give that answer?

A. I do not think I did.

Q. Please observe the question. Will you swear positively that you did not give that answer to that question?

A. I cannot swear positively, but I do not think I did.

Q. Now I will put the three questions to you which were put in rotation and state to you what I claim were your answers, and you can tell me whether they are true or not as a whole. This is the beginning of your cross-examination by myself: "Q. You will find lime in the roof of that chamber? A. Yes. Q. And what was the bottom of that chamber composed of, if you know, at the time you examined it with Mr. Yerington? A. Ore. Q. In place or loose? A. Loose." Now, did you give that testimony; did you give those three answers to the three questions?

A. I do not think I did say "loose." The other is right, but I have no recollection of saying "loose ore" in the world.

Q. You may have said so?

A. Yes; and the reporter may have taken it down wrong.

Q. I am asking you about this one, maybe.

1279 A. Yes; but there is a chance for others to be wrong as well as myself.

Q. If you did testify to it at that time you testified to what you then believed to be the fact, did you not?

A. I testified then what I believed.

Q. If you did testify that way then it was your recollection and understanding of the fact at that time, was it not?

A. It was my recollection and understanding at that time.

Q. As you have already stated, time may have since blurred your memory so that you would now see it in another light, being a man of business and having visited mines since and having had a great many things on your mind; is it not the fact that you may have stated correctly then and be in error now?

A. My opinion is I do not think I stated it any different then from what I do now.

Q. You may have testified in that way at that time?

A. There is something wrong about that word "loose," because I could not have called it loose.

Q. But you did if you so testified?

A. I think not. A man cannot stand on ore in place and call it loose.

Q. I will ask you if you did not give the following answer to the question which I will read to you on the trial already referred to: "Q. Now, then, you are unable to say whether the floor and the bottom of that chamber was covered with loose earth or not,

1280 for the reason that you did not go down to the end of it?

A. There was some loose dirt there." Did you give that answer?

A. I think I did.

Q. Did you give the answer to the question which I will now read? "Q. You made no examination of the bottom of that chamber? A. No."

A. I guess that is correct.

Q. Of what was the roof of that chamber composed?

A. Lime.

Q. And approaching the roof what was it on either side; what kind of rock?

A. Ore and other matters below the roof.

Q. Immediately where the arch began to form the roof, of what was that composed?

A. Lime.

Q. Was the roof, on June 7, 1886, in the same condition it was in at the time you visited it with Mr. Yerington?

A. No, sir.

Q. What had been done with that, if anything?

A. There had been some little work done in the roof.

Q. How much?

A. It had been taken down some; how much I could not say.

Q. How much excavation—a matter of a foot or two?

A. It might be a foot or two.

Q. I understand you to say that at the northwest end of the chamber there has been an excavation out of the floor or bottom of the chamber which has reduced the floor of the chamber from an incline of forty degrees to a level or about a level—that is to say, a cutting down of the chamber at the northwest end. Is that so?

1281 A. It made a considerable difference in it. It has cut it so that it will come pretty nearly perpendicular.

Q. Cut it down perpendicular, so as to make it a level, a flat plane?

A. Yes, sir.

Q. What was the distance from the roof to the floor at the northeast end at the time you were there with Mr. Yerington?

A. At some points more than others.

Q. I say at the northwest end.

A. To the widest point?

Q. I say at the northwest end?

A. It was from eight or nine feet down to four.

Q. No; what was the distance from the roof to the floor of the chamber when you were there with Mr. Yerington in 1884?

A. You mean what is the distance from the 38-foot level to the bottom?

Q. You know where the ore is?

A. Yes, sir.

Q. You know where the northwest end of the ore chamber is?

A. Yes, sir.

Q. I say at the northwest end what was the distance from the roof to the floor at that end in 1884, when you visited that place with Mr. Yerington?

A. There was one part there——

Q. I say at the northwest end.

A. One part of the northwest end the distance was in some places more than others.

Q. At the northwest end?

A. Yes, sir.

Q. How wide was it at the northwest end—the ore chamber?

1282 A. At the bottom.

Q. I am talking about the floor.

A. The floor is any place. There is a floor fourteen or fifteen or sixteen feet.

Q. It was not fourteen or fifteen or sixteen feet at the northwest end?

A. No, sir.

Q. I am talking about the northeast end at that time.

A. About seven or eight feet.

Q. What was the height from the floor to the roof at that time?

A. Probably it would be eight or nine feet.

Q. What was the height from the floor to the roof at that end on June 7, 1886?

A. Let me understand which point you call the roof—whether you call it at the top or bottom of the 38-foot level.

Q. If you do not know what the roof of the chamber is, what have you been doing these years that you have been mining? Do you know the roof from the floor of any excavation?

A. Yes, sir.

Q. I am simply asking you a plain question. You know what the floor is and ought to know what the roof is. I ask you what was the distance from the floor to the roof of that excavation, at the northwest end of the 84-foot level?

A. I want to understand what you mean.

Q. I want to know if you are able to answer that question as I put it to you?

1283 A. I want to understand it a little different first.

Q. I ask you, do you understand that question now?

A. I understand what you are asking.

Q. Then please answer.

A. I want to.

Q. I do not want anything except in answer. If you understand the question I want you to answer it; if you do not understand it, tell me so.

A. I do not understand the way you mean.

Q. Do you know what the roof of an excavation means in a mine?

A. Certainly; anything that is above it.

Q. Do you know what the floor of an excavation means?

A. What you stand on.

Q. You know what I mean when I speak of the floor and roof of that excavation called the ore chamber?

A. Yes, sir.

Q. Will you tell me what the distance was from the floor of that ore chamber to the roof, at the northwest end, in the 55-foot level, when you visited that place with Mr. Yerington?

A. I think the widest point in it.

Q. I am not talking about the width. I am asking you what was the distance from the floor to the roof at the northwest end at the time mentioned?

A. I will call it 8 or 9 feet.

Q. What was the distance, at the same point, from the floor to the roof, on June 7th, 1886, when you examined it?

A. Probably 12 or 13 feet; I did not measure it.

Q. Did you examine the floor in the chamber of the 86-foot level at that point?

A. I examined the floor.

Q. What was it at that point, I mean, and at that time?

1284 A. At the bottom of the chamber?

Q. Yes; in 1886?

A. There is a portion of it ore and a portion not.

Q. I ask you if you examined it carefully?

A. Yes, sir.

Q. What was it?

A. It was waste that we were standing on—some ore and waste.

Q. Was it loose or in place?

A. There was ore in place, and the waste was loose.

Q. What kind of ore was in place?

A. Carbonate ore.

Q. What kind of carbonate ore?

A. How do you mean?

Q. Carbonate of what?

A. Carbonate of lead.

Q. Do you mean to swear positively that you examined the northwest end of the ore chamber and that you find it to be made up of carbonate ore?

A. Yes; there was carbonate ore.

Q. I ask you if you found that floor made up of carbonate ore in its natural state and in its natural place in the rock?

A. I found on one side of the floor——

Q. I ask you about the floor as a whole?

A. It was waste and some ore.

Q. How much ore?

A. In one place there was in the face——

Q. I am not asking you about the face of anything. The floor has no face, in mining parlance. I ask you if you remember that floor and if you found it to be composed of carbonate ore in place?

A. There was some carbonate ore in place.

Q. What was the other rock?

A. Waste.

1285 Q. What kind of rock?

A. Lime.

Q. How much carbonate was there—speaking now as to proportions of lime?

A. In the very bottom of the floor?

Q. I am speaking now about the floor, where I have been talking about all the time.

A. In the very bottom of the floor.

Q. Did you examine that floor at the northwest end?

A. Yes, sir.

Q. Carefully?

A. Yes, sir.

Q. With a view to determining what it was?

A. Yes, sir.

Q. You say, if I understand you right, it was composed of lime and carbonate ore in place?

A. Yes, sir.

Q. In what proportion did the carbonate ore stand to the lime in place?

A. Probably about one-eighth.

Q. In what form did the carbonate ore appear in that rock?

A. It appeared in a body to itself.

Q. How—in a circular form or in the shape of a stringer, or streak, or stratum, or how?

A. I found two different streaks there.

Q. What length along the floor?

A. Not any distance in the bottom of the floor, but it run up.

Q. From there up?

A. Yes, sir.

Q. How could you find them running from the floor up to the roof?

A. In the northwest end.

Q. In the floor I am talking about did you find carbonate ore embedded in the rock, carbonate ore in place, between the lime, in stratified form or any other form?

A. Yes, sir.

1286 Q. What was it, in the form of a stratum?

A. In the form of a stratum.

Q. How wide?

A. One portion about three feet wide.

Q. Please indicate on respondent's model where that ore is.

A. This three feet that I was speaking of?

Q. Yes.

A. It was up in about this direction on the bottom of the ore chamber.

Q. State whether that ore is marked by sticks or indicated by sticks on the northeast side of the ore chamber. Look in there and see those sticks and see if that represents it.

A. In my opinion this represents a streak that was on this hanging-wall side of it.

Q. Is that another streak?

A. There are two streaks of ore there.

Q. How wide is that streak?

A. About 20 inches.

Q. The one on the northeast side?

A. Yes, sir.

Q. Now, on the northwest side you find another streak?

A. Yes; they both come together going up.

Q. You find on the northwest side of the chamber a streak about three feet wide?

A. Yes, sir.

Q. And one on the northeast side of the chamber about 20 inches wide?

A. Yes sir.

Q. What is the distance between the two streaks, measuring across the chamber?

A. I should judge 6 or 7 feet.

Q. Does the streak that you find on the northwest side extend up along the northwest side of the chamber?

A. Yes; it extends up in the end of the chamber.

Q. It is seen on the northwest wall or side?

A. Yes, sir.

1287 Q. Now, do you know whether that goes down into the floor of the chamber or not?

A. You can see some portion of it in the floor.

Q. I ask you if you know whether it goes down into the lime rock in the floor of the chamber.

A. As far as you can see.

Q. Is it not the fact that it has been excavated from the floor there, and is it not shown that it does not go down into that lime rock?

A. I do not know. This portion that you cannot see is filled in with lime rock and waste.

Q. Filled in with waste on that side?

A. Yes, sir.

Q. So it does extend down towards the floor to a point where it is obscure or covered by waste rock being thrown up against it?

A. Filled in and made a platform of.

Q. For that reason you cannot see how far it extended downward?

A. No; you cannot.

Q. About where is that to be seen? Does it extend along the whole side and length of the northwest wall of the chamber?

A. As far as you could see, it extended on that end up.

Q. To the 38-foot level?

A. Yes, sir.

Q. What is that wall composed of, outside of that ore that you speak of?

A. Lime.

Q. When you speak of the thickness of this ore, which way do you measure—lengthways of the chamber or up and down the chamber?

A. The thickness of it.

Q. Up and down the wall or lengthways of the wall?

A. You measure across the ledge.

Q. Across the chamber or lengthwise, in the northwest wall?

1288 A. Across it.

Q. Here is the northwest wall running up and down?

A. Yes.

Q. Do you measure up and down or lengthways of the northwest wall to get the thickness of that ore?

A. You measure across the ledge, as it runs, for the thickness of it.

Q. Do you measure up and down or lengthways of the wall to get the thickness of that ore?

A. I do not understand it the way you put it.

Q. Do you know which is lengthways of the west wall?

A. I know it to be this way.

Q. You know the length of the northwest wall, do you not?

A. This faces the ore.

Q. I am not asking you about that. I am asking you about the northwest wall. It is longer than it is wide?

A. I do not think it is.

Q. What is the length of the northwest wall?

A. It was probably from clear across it.

Q. I am not asking about across it, but the length of it?

A. I should say 17 or 18 feet.

Q. How high is it from the floor to the roof, following the northwest wall?

A. I should say 13 or 14 feet.

Q. 13 or 14 feet is not as long as eighteen feet?

A. Not as long.

Q. Do you measure lengthways or up and down on that wall in order to get the thickness of the ore?

A. I would measure clear across the ore to get the thickness of it.

1289 Q. I am asking you if in making that measurement you would measure lengthways in the northwest wall or up and down the northwest wall; there is no use wasting time, you may as well answer the question.

A. I do not want to waste time.

Q. Then why do you not answer?

A. Let me explain.

Q. Answer my question first and explain afterwards.

A. I cannot answer.

Q. Answer my question or say you do not understand it.

A. I do not understand the way you put it.

Q. You say one way of that northwest wall it is 18 feet long?

A. Yes, sir.

Q. In ascertaining the width of the wall do you measure that way?

A. No, sir.

Q. You say from the floor of the chamber to the roof of the chamber, following up the northwest wall, the distance is about 14 feet. Do you measure on that line in order to get the thickness of the ore?

A. I do not.

Q. How do you ascertain the thickness of that ore?

A. By taking the pitch of the vein of the ore body and measuring across it.

Q. Now, does that vein stand flush with the line of that wall?

A. Pretty nearly so.

Q. Is it substantially a smooth surface?

A. Pretty near as smooth as you can get it.

Q. Does this which you call a vein of ore project out from the northwest wall?

A. Very little, if any.

Q. Does it any; does it project any at all?

A. It might in places; I could not say.

1290 Q. It looks like a black mark on a white wall?

A. It is a pretty good sized mark.

Q. I understand that I did not limit the mark, whether it was seventeen feet wide. It is a direct red line on a white-lime wall?

A. Something similar to it.

Q. How can you tell the dip of a streak of that character when there is no projection beyond what are supposed to be its walls; how can you get the dip of such a streak?

A. By following the dip of the streak; it shows plainly the lime from the ore body.

Q. Do you know whether that ore is encased within the lime walls or whether it is as I have already explained, a dark red streak adhering to the lime walls or a lime rock?

A. It is between lime formation.

Q. Do you know that it is encased in lime and is in the shape of a vein or whether it is simply a streak of ore adhering to the lime rock behind?

A. It is.

Q. Answer my question. Do you know whether the streak of ore which you have referred to is a streak adhering to a lime wall behind or whether it enters into the lime and is encased in lime, the same as a vein would be?

A. I think it enters in.

Q. I ask you if you know?

A. Yes, sir.

Q. You do know?

A. Yes, sir.

Q. You will swear to that positively?

A. I will swear to that positively.

Q. Did you pick down any of that ground for the purpose

1291 of determining whether it entered into the lime or not?

A. I did.
Q. Where?
A. At a point a foot below the chamber.
Q. When?
A. On June the 7th.
Q. Did you have a pick?
A. I had a poor one.
Q. Who was present when you did it?
A. Mr. Alexander, Mr. Anthony, and Mr. Silva.
Q. How long were you doing it?
A. A very short time.
Q. How long; how much did you take out?
A. Probably 15 or 20 pounds.
Q. Did you make such an examination as now enables you to swear that the streak which you refer to enters into the lime rock and is, in vein form, encased between lime walls?
A. Yes, sir.
Q. And that it is not a streak of ore or vein matter attached to or fastened — adhering to the lime behind?
A. It may be for a certain distance, but not in sight.
Q. I say did you make such examination as enables you to say that it is not simply a streak of ore adhering to a lime wall behind?
A. As far as I went.
Q. You are simply wasting time. When I put a question, if you understand it, answer it; if you do not, let me know. I ask you a plain, straightforward question.
A. I made an examination to determine that it enters between the walls of lime.
Q. Are you able now, from the examination which you made, to swear positively that it is not adhering to lime back of it?
1292 A. If I cannot see a mile beyond it I do not know where it is. I do not know what is beyond it, as far as I went, I say.
Q. Where was it—about the center of the chamber?
A. No; it was not quite the center of the chamber.
Q. Whereabouts?
A. It was more on this side.
Q. If that streak of ore entered into that wall as a vein would not that vein have been cut in winze No. 2; could it exist and extend into that wall and not be cut by winze No. 2? Answer me that question. Could it go into the wall, as you have described, without having been cut by winze No. 1?
A. It is possible it could.
Q. Then it would have been seen? If it went out it could be seen in winze No. 2 if it entered there?
A. I could not say.
Q. Did you go into winze No. 2 for the purpose of determining that question?
A. I was in winze No. 2.
Q. Did you go into winze No. 2 on June 7th, 1886, and descend from the mouth of the winze to the bottom of the winze?
A. Yes, sir.

Q. On the 7th of June?
A. Yes, sir.
Q. Who went with you?
A. Mr. Anthony, Mr. Fitzgerald, and Mr. Silva.
Q. Did you descend the 82-foot level?
A. Yes, sir.
Q. In winze No. 2?
A. Yes, sir.
Q. Did you not swear yesterday that you did not go down to the 82-foot level?
A. Not at the time of this visit.
Q. On June the seventh, 1886, did you not swear that you or your party did not go down to the 82-foot level?
A. No.
Q. Do you swear now that you did?
A. Yes, sir.
1293 Q. Did you look to see whether that ore streak was to be found in winze No. 2?
A. I do not know that I looked particularly in the bottom of winze No. 2.
Q. Anywhere in the winze; anywhere from the mouth to the bottom of winze No. 2 did you see that streak of ore?
A. I did not in the bottom part.
Q. Did you see it anywhere?
A. Yes, sir.
Q. Where in winze No. 2?
A. In the upper part.
Q. Indicate there on the model. Mark and number it where you saw that ore streak.
A. Above the 38-foot level.
Q. Above the 38-foot level in winze No. 2?
A. Yes, sir.
Q. Do you mean to say there is any ore of any kind or character in the shape of a vein, in the shape of a stratum in winze No. 2, between the 38-foot level and the tunnel level and the mouth of winze No. 2?
A. Yes, sir.
Q. Where?
A. Above the 38-foot level.
Q. Mark it. How far above?
A. I did not measure the distance; probably half way. I could not tell, because I did not measure it.
Q. What was the dip? You say that you learned something of the dip of that streak of ore seen on the northwest side of the ore chamber. What was its dip there?
A. I did not examine the dip to it there. I will tell you for what reason, because I was on a ladder there, and there was no place to step out on. I held my candle over and saw a streak there and some other spots of ore in different places.
Q. Have you any idea at all of the dip of that streak as
1294 seen in the ore chamber?

A. I could not say positively.

Q. Do you mean to say that your examination was such that you could not tell anything at all about the dip, and yet you go up in winze No. 2 half way between the 38-foot level and the mouth of the winze, and that you see a streak there that you are able to identify as the same streak which you saw in the ore chamber?

A. No doubt there is a continuation of it.

Q. I ask you if there is any streak at the point named by you in winze No. 2 which you can trace from that point down into the ore chamber to the northwest side?

A. I think there is a continuation there.

Q. I ask you if there is any ore traced from the point indicated by you, namely, half way between the 38-foot level and the tunnel level in winze No. 2, and the ore chamber?

A. There are places there; you can trace it from place to place.

Q. I ask you if there is an ore tracing from the winze you designate into the ore chamber?

A. You can trace it from place to place.

Q. I ask you if there is an ore tracing from winze No. 2, the point designated by you, down to and connecting with the streak of ore which you have mentioned as existing on the northwest side of the ore chamber?

A. I do not mean to say it is connecting.

Q. I simply want you to give me an answer, yes or no. Is there or not an ore tracing?

A. I am trying to give you an answer.

1295 Q. The answer will be yes or no; there is or is not an ore tracing?

A. There is ore there in place.

Q. I ask you if it must not be the fact that there is or is not an ore tracing?

A. You might trace it and I could not. I am answering the question as I see it.

Q. I ask you a plain question—there is or is not an ore tracing; is not that the fact?

A. Some places you can trace it and others not.

Q. Answer my question.

A. That is how it appears there.

Q. I will have an answer to that question. Is there or is there not an ore tracing between winze No. 2 and the ore chamber and connecting with the streak which you describe as existing on the northwest side of the ore chamber?

A. I have answered you.

Q. Will you answer the question yes or no?

A. There is not a continual trace there.

Q. That is not an answer.

A. Then I do not know how to answer.

Q. Is there or not an ore tracing connected?

A. If that is the way you ask it I have answered it a dozen times. I have said there is not a connection. Now let me explain.

Q. I do not desire any explanation; that is an answer to my question.

A. What I mean to say is—I answered it in the first place in this way—there was a streak of ore there and in different places, but I did not think it was continuous.

Q. Then why do you say that the streak of ore which you
1296 saw on the northwest side of the ore chamber is to be found in winze No. 2 midway between the 38-foot level and the mouth of that winze? That is what you said?

A. I think it is the same strata.

Q. You think so?

A. Yes, sir.

Q. But there is no connection. My question is, Can you see and did you see the ore streak which you have described as existing on the northwest side of the ore chamber anywhere in winze No. 2; did you see that streak in winze No. 2?

A. Ask me the question again.

Q. My question is, Can you see and did you see the ore streak which you have described as existing on the northwest side of the ore chamber anywhere in winze No. 2; did you see that streak in winze No. 2?

A. I have seen some portions that I consider a continuation of it.

Q. I ask you if you saw that same streak extending into winze No. 2 or where it extended in?

A. Not the continual streak; I did not.

Q. Did you see the same streak which you saw on the northwest side of the ore chamber anywhere in winze No. 2?

A. I do not know how to answer these questions.

Q. Answer "yes" or "no." Did you or not see it; you know how to answer that question?

A. I know how to answer a thing when I know the question.

Q. You either know a thing or you do not; is not that so?

A. When a thing is cut in two——

1297 Q. You either know or you do not know whether that vein is to be seen in winze No. 2; is not that so?

A. I answered it once, and I do not think it was satisfactory to you.

Q. You do not give me an answer to my question. You go off on something else. As a fact, that ore streak does or does not extend into winze No. 2; is not that so?

A. I could not say positively that it was not so.

Q. You know as a fact it does or does not. It must do one thing or another?

A. I do not know; it might extend further on; I cannot tell.

Q. If it extends into it and further on that cuts no figure. Does it or not? It must do one thing or the other. Does it or not, to your knowledge, extend into winze No. 2?

A. I did not trace it on that side to examine it particularly.

Q. You have said, I believe, that the ore chamber as represented on the model there fairly presents a view of the ore chamber as it existed on June the 7th, 1886?

A. Partly. I think it is a fair average model of it in a good many respects.

Q. You see, do you not, some sticks placed on the northeast side of the chamber, do you not?

A. Yes, sir.

Q. And to which your attention has already been called, and you have stated those sticks represent a streak of ore on that side measuring about 20 inches?

A. Yes, sir.

Q. How do you measure it—across those sticks?

A. Yes, sir.

Q. At right angles with the sticks in order to get the thickness?

A. Yes, sir.

1298 Q. Does that ore streak stand out or project out from the surrounding rock or the rock on either side?

A. Yes, sir; it projects out some little.

Q. How far out?

A. It may be a few inches in a place or two—not much.

Q. Did you ascertain the dip of that?

A. I did not.

Q. What is the rock above those sticks on the northeast side of the chamber?

A. Lime.

Q. What is it below those sticks on the northeast side?

A. I could not tell you.

Q. Did you not examine it?

A. I examined it, but I did not dig below this ore.

Q. Did you look under? The sticks represent the vein or ore There must be another character of ore below if it is a vein.

A. You would have to dig it up to see.

Q. A vein has to have two sides?

A. Certainly.

Q. You have given us the kind of rock on the upper side of the ore streak?

A. Yes, sir.

Q. Why did you not examine the rock on the lower side of the ore streak?

A. I did.

Q. What was it?

A. Lime.

Q. Does that rock extend into the lime as a vein and continue on from that side, or is it a slab of ore adhering to lime behind it?

A. It got the appearance of a continual streak.

Q. It has?

A. Yes, sir.

Q. Did you examine that and pick it to determine?

A. I knocked off some of it.

1299 Q. Did you not knock off enough of it so as to determine that question?

A. I knocked off enough to determine the question as far as I went.

Q. Did you knock off and work enough to determine whether it entered into that lime and whether it was a stratum of ore or whether it was a slab lying against and adhering to a lime rock behind or other kind of rock?

A. I did not work enough on it to know for certain whether it entered, but it had every appearance of a strata of ore going in the lime

Q. Could you not see on the lime face above that stratum that there had been ore formerly adhering to that lime rock, and that it had been drilled or picked or taken down?

A. There had been work done that might show the ore had been taken out.

Q. Above the streak?

A. Yes, sir.

Q. And could you not see on the face of the lime rock below the streak that ore once adhered to that and had been cut off and worked off?

A. As far as I see, outside of the vein matter.

Q. Aside from it?

A. As far as I see, there had been ore cut off from the lime rock.

Q. Was that the appearance of the lime rock on the northwest side of the chamber, outside of the streak of ore which you have mentioned as existing at that place?

A. I do not understand the question.

Q. I understand you to say the northwest wall from the floor to the roof is about 14 feet high?

A. Yes, sir.

Q. And the wall was about 18 feet long? You have run
1300 along that wall or across that wall a streak of ore which you say was some three feet or more in width?

A. Yes, sir.

Q. What is there on either side of that streak?

A. Lime on both sides.

Q. Above and below the streak?

A. Yes, sir.

Q. Could you not see on the face of that lime that ore had once adhered to that; had been cut down and worked off of it?

A. Certainly the ore had been taken out.

Q. Before the ore was taken off those sides, as you have represented, each side of the chamber had been covered with ore?

A. It was at one time.

Q. And the open space there was once composed of ore and other matter—vein matter?

A. Yes, sir.

Q. So that these walls upon which you find these two streaks are evidently the walls of a chamber once filled with ore or vein matter, which ore or vein matter had been taken out, except to the extent which you have described; is not that the fact?

A. Yes, sir.

Q. Now, the northeast end of the chamber, which is down where the little shaft is, in what kind of rock is that?

A. It is in vein matter.

Q. Is it not in lime?

A. It is in vein matter and quartzite; there may be some lime mixed with it.

Q. It is in quartzite?

A. Some quartzite.

Q. Did you go down through that little hole to the 82-foot level, in what is called the upraise?

A. I came from the 82-foot level up through there.

Q. What did you find that upraise in?

1301 A. I found in places some vein matter.

Q. What was it in, generally speaking?

A. Generally lime.

Q. There was no vein exposed in that shaft?

A. Some vein matter.

Q. Vein matter may be found any where in the lime rock in that country in all such formations?

A. You find vein matter and ore in almost any place.

Q. Scattered?

A. Scattered.

Q. I am speaking as to whether there was a vein exposed in that upraise?

A. Below this platform here?

Q. I mean a vein or lode; I do not mean a little bunch here or there; is not that upraise in lime rock substantially?

A. Between this hole here for a short distance vein matter is exposed.

Q. What do you mean by vein matter—quartzite?

A. Quartzite and some little spots of ore mixed through it; very little.

Q. Look at this piece of rock which I now hand you; can you tell me what it is; is it vein matter?

A. No, sir.

Q. What is it?

A. It is lime.

Q. Is it not quartzite?

A. It may be mixed with quartzite.

Q. Is it not what you call quartzite, and is it not the only kind of quartzite that is found in that chamber? Of course, there is a mixture of lime in it.

A. I do not know; it is a mixture of porphyry.

1302 Q. Is this not a fair sample of the rock in the bottom of the ore chamber?

A. I think a fair sample would be considerably more lime.

(A specimen offered in evidence and marked "Complainant's Exhibit Rock Sample No. 1.")

Q. Do you know whether the ore streak which you have described as being on the northeast side of the ore chamber extends beyond to any considerable distance?

A. No, sir.

Q. Did you go down on the 82-foot level and examine the ground down there to determine whether it extended down or not?

A. We went down to the 82-foot level.

Q. Did you make an examination there with a view of determining whether that ore streak which you saw on the northeast side extended to that level?

A. I found some veins down there mixed with iron.

Q. I asked you another question altogether. Did you examine the 82-foot level for the purpose of determining whether the ore streak which you described as being on the northeast side of the ore chamber extended down to the 82-foot level?

A. I think there is a continuation.

Q. I asked you if you made an examination for the purpose of determining that question.

A. As far as I could see.

Q. I have not asked you anything about that. I asked you if you made such an examination.

A. I could not go through the solid rock.

Q. I ask you for an answer to the question. Be kind
1303 enough to answer it.

A. It is a question that a man cannot altogether answer.

Q. You did or did not do the thing?

A. We went down and examined.

Q. It is one thing or another—yes or no. Did you or not do a certain thing? You know whether you did or not.

A. We went down the 82-foot level and examined it.

Q. Will you answer that question?

A. We went down the 82-foot level to examine and determine whether this ore streak went down or not.

Q. If Mr. Alexander said you did not go down the 82-foot level and no examination was made on the 7th of June Mr. Alexander tells that which is untrue?

A. Yes; if he says that, it is untrue.

Q. If Mr. Alexander says you did not go down on the 82-foot level for the purpose of examining it on June the 7th, 1886, he tells that which is not true?

A. Yes, sir.

Q. Did you examine the 82-foot level for the purpose of determining whether the ore streak which you described as being on the northeast side of the ore chamber extended down to the 82-foot level; did you or not?

A. In a moment, if you please.

Q. I want an answer to that question.

A. We examined it.

Q. Answer the question in full. Did you examine it for the purpose of determining whether the ore streak on the ore-streak side of the chamber extended down to the 82-foot level?

A. Yes; I went down for that purpose.

1304 Q. When did you make that examination?

A. On June the 7th.

Q. Who went down with you?

A. Mr. Anthony, Mr. Silva, and Mr. Fitzgerald. I am not sure whether Mr. Alexander went down that level or not.

Q. Is there on the 82-foot level a vein of ore exposed?

A. There is a vein of matter exposed there.

Q. I did not ask you about a vein of matter. I ask you if there is a vein or lode, ore-bearing, on the 82-foot level?

A. Yes, sir.

Q. Where does it begin?

A. It begins between winze No. 1 and winze No. 2 here.

Q. At what point?

A. I would judge about 25 feet from winze No. 1.

Q. And how far is it to be seen?

A. It might be seen for about 20 feet.

Q. In what direction?

A. Going towards No. 2 winze.

Q. Mark the place on the map. Mark it at the point of beginning with the letter "A" and the point where it ended with the letter "B."

Mr. MINER: I desire to state to the witness that the model is constructed on the plan of 10 feet to the inch.

Mr. REDDY: We object to the counsel testifying. The surveyor who constructed it says it is constructed on a scale of 10 feet to the inch, but whether it is or not, of course we do not know.

Q. If it is constructed on that scale, mark the point where the vein begins with the letter "A" and the point where
1305 it ends with the letter "B."

A. I would judge about there (pointing).

Q. What is the width of that vein?

A. It is from an inch or two to a foot and a half, in places.

Q. What is the vein matter where it is an inch wide?

A. It is chiefly iron.

Q. What is the vein matter where it is a foot and a foot and a half wide?

A. The principal portion is iron.

Q. Then it is a vein encased in iron rock?

A. More iron, I think, than any other material.

Q. And it extends along in the drift for about 20 feet. Where is it to be seen—on the bottom, on the side, or in the roof of the drift?

A. You could see it from the roof.

Q. Can you see it in the bottom?

A. In places.

Q. How is it you cannot see it all the way, if it exists?

A. Because we did not dig to see it.

Q. Do you know it exists where you did not dig or did not see?

A. I do not know.

Q. Is it not the fact that in the bottom, what you call the vein consists of chunks of iron rock at different places?

A. It is easier for you to trace it in the roof.

Q. That is not an answer to my question. I am talking about the floor. I ask you if it is not the fact that what you call a vein

consists of bunches of iron rock here and there along the floor of that drift?

A. As far as I have seen, it did.

Q. It is not a well-defined vein?

1306 A. It is in some places; in other places it is not.

Q. The points you have designated are points where Silva himself had excavated before he sold the mine to Yerington; is not that so?

A. I think so; I cannot tell to a foot or two.

Q. From the point marked on towards the upraise which connects with the ore chamber, and which is marked on the paper "15," what kind of rock is the drift run through?

A. Lime, in general.

Q. Is it not all lime?

A. There may be some little quartzite mixed in it.

Q. But it is lime and quartzite?

A. There may be some little. The principal portion is lime; you can see it is lime.

Q. Going up the upraise marked "15" it is lime and quartzite up to the ore chamber?

A. The principal portion of them until you get below this ore.

Q. How far below?

A. That is, below this platform; it may be three feet.

Q. It is all lime and quartzite up until within three or four feet?

A. Excuse me, all lime.

Q. Until you get up to within two or three feet of the bottom of the ore chamber?

A. Yes, sir.

Q. From there it is quartzite principally?

A. Quartzite and lime and some spots of metal in it.

Q. The little shaft had been sunk down to where it encountered the solid lime, had gone through the quartzite, the specks of ore, and other stuff, and had reached the hard, solid lime?

1307 A. I could not tell whether that was sunk or raised.

Q. You do not know?

A. No, sir.

Q. The fact is that the solid lime is reached in about three feet from the floor of the ore chamber?

A. It has got the appearance of it.

Q. Could you not tell what part was raised and what part had been sunk down? Was there no difference in size or anything else that would indicate to you as a miner that there had been part of it made from the surface—from the top—and a part by an upraise?

A. A small portion here was more perpendicular than the balance.

Q. Could you not see by the bottom, the drill holes, or something or other that the shaft had been sunk down that drift instead of being raised up?

A. I do not know that I saw any drill holes in it.

Q. Could you not see pick marks, or was the rock so hard that picks would not make much of a mark in it? It was pretty hard?

A. Some of it was hard.

Q. In a shaft you could tell by the pick marks and drill holes re-

maining whether they had been made by raising up from a lower depth or whether it had been sunk down from above, could you not?

A. I could tell if I could notice.

Q. If you made a close examination of the ground you could determine that fact?

A. Yes, sir.

Q. Then your examination of that part was superficial? It was not a close examination for any purpose?

A. I went through there.

Q. You just walked through it?

1308 A. I went through it and looked. I broke a little piece of rock off in one place.

Q. There might have been a dozen drill holes all round which would indicate whether the winze had been sunk or raised?

A. There might be any amount, for all I know, because I did not pay any particular attention to it.

Q. Now, from the bottom of winze No. 2 to the 55-foot level in what kind of rock does that pass running from the 82-foot level?

A. Chiefly in lime.

Q. And from the 55-foot level to the mouth what kind of rock?

A. Some—chiefly ore, but ore in places.

Q. Spots?

A. Yes, sir.

Q. They had been drilled. There was evidence that the ore bunches or blotches had been taken out since the shaft was made?

A. There had been some work done there.

Q. Now, you have travelled from the mouth of winze No. 1 down to the 82-foot level?

A. Yes, sir.

Q. What is to be seen in that winze?

A. No. 1?

Q. Yes.

A. I did not go down to No. 1.

Q. Have you passed through No. 1 at all?

A. Not at this time.

Q. You have passed through No. 1?

A. Yes, sir.

Q. All the way through?

A. Yes, sir.

Q. What kind of rock does that go through?

A. It goes chiefly in lime—some vein matter.

Q. In bunches?

1309 A. Below from the mouth of No. 2 down some distance.

Q. I am talking about winze No. 1.

A. I mean that down some distance you can find vein matter.

Q. In bunches?

A. You cannot see enough to follow it.

Q. There is nothing like a well-defined vein cut by that winze?

A. No, sir.

Recess to 2 p. m.

1310 *Afternoon Session.*

(Counsel and parties met pursuant to adjournment.)

J. C. EDDY recalled for further cross-examination.

Mr. REDDY:

Q. Have you examined on the Stirling tunnel level between winze No. 1 and winze No. 2 the floor?

A. Yes, sir.

Q. What do you find between the two points on that drift?

A. I find in places spots of ore.

Q. Do you find a vein there?

A. I find vein-matter.

Q. I ask you if you find a vein of ore there?

A. Yes; you can put it a vein as far as you can trace it; you can call it a vein as far as you can trace it.

Q. I know you can as far as you can trace it, but how far do you trace it?

A. You cannot trace it but a short distance.

Q. Can you trace it at all from one shaft to the other?

A. Not continuously.

Q. It is mixed with what?

A. Lime and iron.

Q. You spoke about ore.

A. There is ore in place.

Q. What kind of ore—iron ore?

A. Some lead and iron both.

Q. In what shape does the lead occur?

A. In kind of bowlders—kidneys, as they are commonly called.

1311 Q. Is it lead or carbonate?

A. The principal portion is carbonate, and there is some galena in it.

Q. Now, going back to the ore chamber for a moment, when you spoke about there being ore on the bottom or floor of the chamber you had reference to the streaks, one of which you described as being on the northwest side and the other on the northeast side, do you not?

A. Yes, sir.

Q. And between those two streaks what is the floor?

A. Lime.

Q. What is the difference between the two streaks across the ore chamber?

A. I should judge about three feet.

Q. When you say lime you mean a mixture of lime and quartz such as we have in complainant's rock sample marked Exhibit I that you examined this forenoon?

A. I think it contains more iron.

Q. Now, before we leave it—and when we do we leave it forever—what kind of ore is there in the streak or slab, or whatever it may be, which you found on the northwest side of the chamber?

A. Carbonate ore.

Q. Is there any iron ore?

A. There is not a great quantity of iron ore mixed with it; it contains a little all the way.

Q. How do you determine that to be carbonate ore? It is mixed with iron, is it not?

A. Certainly it is mixed with iron.

1312 Q. It is so mixed with iron that it was left there on that account evidently, as a miner, because it was so mixed with iron and the grade of the ore was so poor that it was left there and not taken down when the other ore was taken down?

A. I think not.

Q. Why do you think not?

A. Because I think there is ore that would pay to take down.

Q. How much is there of that right in that chamber—right on that side?

A. It all depends on how any person wanted to use it.

Q. I understand not. I am talking about ore that will pay not for a flux, but ore that will pay to smelt or ship.

A. I think two-thirds of that ore that I saw there in that streak——

Q. I am not asking what proportion of iron ore would pay. How much ore is there in that stratum which you would view that it would pay to work—to extract and to take it to any known smelting works and smelting it?

A. That is a little different question. I will answer it in this way: I think there is fully one-half of that streak of ore that will pay to be smelted on the ground.

Q. I ask you how much there is there again?

A. I say in this streak there is three feet.

Q. I ask you how much there is in sight in that chamber on that side?

A. I cannot tell the amount of tons.

Q. Is there ten tons of lead ore—smelting ore—in sight in that stratum?

1313 A. Yes; I consider there is more.

Q. How much more?

A. I cannot tell.

Q. Is there twenty-five?

A. I should judge a good deal more than that.

Q. I ask you if there is twenty-five, in your opinion.

A. I think more than that.

Q. Of carbonate ores?

A. Yes, sir.

Q. Cannot you give me an idea whether there is a ton or a million of tons?

A. I think there is fully fifty tons there.

Q. Of smelting ore?

A. Yes; at that very point that I am speaking of.

Q. In the ore chamber—both strata or one? How much ore is there on the other side, if you know?

A. I do not know how much, but I guarantee almost it will give within fifteen or twenty tons.

Q. You think, then, there is eighty-five tons on the side of that chamber?

A. I think there is.

Q. Do you know anything about the thickness of that ore on the side—I mean how far it runs? Does it run from the face, where you viewed it?

A. I do not know.

Q. How do you know there are fifty tons of ore there?

A. I think it will continue.

Q. It is on that basis that you say there are fifty tons. Suppose it does not go in any further from the lime which you see there and from which the ore has been stripped, how much, then, would you say?

1314 A. If it does not go inside the lime any distance it would not be but very little.

Q. How much? Tell us that once.

A. If it would not go in but a few inches you could not get over ten or fifteen tons at the most.

Q. And how on the other side of the chamber?

A. You could get but little on that streak.

Q. Have you assayed that ore to know what its value is?

A. I have not assayed it at the present time.

Q. You do not know anything about the value of that ore which you saw on the side?

A. Not by assaying.

Q. By any means—have you any knowledge as to the actual value of that ore?

A. I have not had it assayed.

Q. I ask you if you know by any means?

A. I do not.

Q. Then why do you say that that is pay ore if you do not know what it will go—what its value is?

A. From my own judgment, I say it is pay ore.

Q. In your examination yesterday did you not say to counsel that you were not a competent assayer and would not trust your own assay where your own interest was involved?

A. Certainly.

Q. Is not that because your own judgment is not to be relied upon?

A. I am willing to buy ores on my own judgment.

Q. Did you not make that answer?

A. Certainly.

Q. Did you not make this answer also, that even after

1315 making an assay of ore you would not purchase or invest your money in it without having an assay from somebody else who knew more about it than you?

A. Not exactly those words.

Q. In substance? I will hunt for the very words if you insist upon it.

A. I think I said this: That after I had bought ores, before I would pay for them, I would get assays from some more competent person than I was myself.

Q. Is your judgment better than your assays?

A. I think not.

Q. Then you could not trust either your own judgment or your assays where your own money is involved?

A. Yes; I have trusted to my own judgment several times.

Q. Have you paid money out and bought ore on your own judgment?

A. Yes, sir.

Q. Did you not just say you would not buy ores without an assay from some one else?

A. No; I said I bought ores before I had any assays made, but before I paid for them I would have an assay.

Q. You do not actually complete a purchase until you pay for it?

A. The parties whom you buy from suppose you are going to pay for it.

Q. You mean you would not complete any bargain until you knew the ore was of a certain value and you would ascertain that by an assay by some one else?

A. I made an agreement how much I would pay and in the end I would send my assaying to some one else whom I thought was more competent than myself.

1316 Q. That was before paying out your money?

A. Yes; at different times I have bought ores without knowing what their value was.

Q. Did you pay for them until you had them assayed?

A. I did not make any assays.

Q. You lumped it?

A. Yes, sir.

Q. Guessing at it—made a bargain on which you could not make a mistake. You knew the other fellow had the worst of it all the time?

A. I did not know that.

Q. You say there are fifteen or twenty tons of ore in that chamber which would pay with a furnace right there, and possibly eighty-five tons?

A. That is what I still think.

Q. What is your judgment as to the value per ton of that ore?

A. Of the amount that I would work in the furnace, I judge it would be not less than thirty ounces and forty per cent. lead.

Q. What would the value of that be—the net value of it? What would you realize from it?

A. It all depends on how cheap I could work it.

Q. What would you realize from it?

A. I would realize something. I have not figured it down so as to tell.

Q. What I mean by "realizing" is: Supposing it gives you thirty

ounces and you ship that to San Francisco, how much would you get out of that after paying the discount and the cost of separating the lead from the silver and putting its product on the market,
1317 without reference to the cost of extracting or freight?

A. I do not say I could ship it to San Francisco.

Q. You do not eat it. You would have to send it to some market.

A. I may have some place of my own to work it.

Q. When you finally realize on it what would you get out of thirty ounces of ore, after paying the discount on silver and lead and the cost of separation?

A. Even if I ship it to San Francisco I get something.

Q. I do not care where you ship it. Tell us what the result would be.

A. I think I would get twenty-five or thirty dollars a ton.

Q. You mean to say that out of thirty ounces of ore you would get how much lead?

A. Forty per cent.

Q. You mean to say you would get how much?

A. From twenty-five to thirty dollars a ton.

Q. When did that happen? When was it that you could realize that?

(Objected to by respondent as irrelevant and immaterial.)

Q. Do you mean to say that in the year 1884 you could realize twenty or twenty-five dollars a ton on ore that would yield thirty ounces in silver and only forty per cent. lead, in the San Francisco market or any other market?

A. I thought you were asking about now.

Q. I am talking about 1884.

1318 A. I could not at that time.

Q. Could you realize anything from it in 1884 by shipping it to San Francisco or any other market?

A. I could realize some by shipping it to Darwin.

Q. How much?

A. I could not exactly say.

Q. You do not know?

A. I could not say for positive.

Q. What would it cost to extract that ore?

A. Probably five dollars a ton. I never hired men there and paid them and weighed the amount of ore they would take out in a day to know.

Q. I mean in a general way, practically, as a business man and a miner?

A. In 1884, when I saw it there, I could have taken it out for less than five dollars a ton.

Q. From such a streak as there was in the side there?

A. At that time.

Q. What would it cost you to take it to the nearest smelting works?

A. Five dollars and a half to six dollars a ton.

Q. What percentage would you realize at any of those smelting works?

A. That depends on different times.

Q. Taking the price of lead in 1884, the cost of smelting in Darwin, the cost of extraction, the cost of hauling, could you realize anything from such ore by reducing it in Darwin?

A. I could not.

Q. You would lose on it by hauling it that distance and paying that freight?

A. I do not know that I would lose.

1319 Q. You could not make anything?

A. I do not think I could.

Q. How much would an ordinary smelter cost at the mine?

A. It would all depend on what kind of a smelter you wanted to put in.

Q. Any kind of a smelter that a business or sensible man would erect for the purpose of smelting ore.

A. I think he could put in a fair-sized smelter for seven or eight thousand dollars.

Q. You would have eighty-five tons of thirty ounces to go in the furnace that would cost you seven or eight thousand dollars to erect?

A. There is only one point you are speaking of.

Q. I am speaking of what was in sight in the ore chamber.

A. There are still other points.

Q. You did not examine above the tunnel level since Mr. Yerington did his work. You do not know what is there. Talk about what you know, and do not guess.

A. On those points I am satisfied.

Q. I am not asking you about your satisfaction, and I move to strike out that answer as voluntary and not in response to any question put by me.

(Counsel for respondent states that all the witness can state with regard to the amount of ore is his opinion.)

Q. How many assays did you ever make from the Stirling mine?

A. I could not say for positive.

Q. Do you know that you have made more than three?

1320 A. I have made and had made a good many.

Q. I am talking about what you made and not what you had made. I ask you how many assays you have made—if you made more than three?

A. Do you mean personally?

Q. I am talking to you and directing the question to you.

A. I do not remember how many.

Q. Did you make more than three?

A. I think I did.

Q. What kind of a crucible did you use—old or new?

A. It is possible. I used new, and sometimes old.

Q. Do you know whether you used new or old in making these assays which you say you made?

A. There is not a doubt but what some were new and some were old.

Q. How are you able to say, at this distance of time, that some were new and some were old, when you do not remember how many you made?

A. Because you cannot use old ones all the time.

Q. I know that. How are you able to say, at this distance of time, that the particular assays which you made from the Stirling mine were made with new or old crucibles?

A. To the best of my opinion, I think a portion were new and a portion old.

Q. Those that were old might mislead you?

A. They might, possibly.

Q. Retaining something from former assays?

A. We generally looked at them very carefully.

Q. You often make a mistake?

A. We might possibly do it.

1321 A. You have put a piece of paper into the ore chamber; do you mean to say that with that paper in the ore chamber the respondent's model represents the ore chamber as it appeared on June 7, 1886?

A. I do not know anything about that paper in June, 1886.

Q. That would not represent the ore chamber on your last visit?

A. No, sir.

Q. I will ask you if it would represent the ore chamber at the time you visited it in 1884, in company with Mr. Yerington?

A. Pretty nearly so.

Q. Was that ore chamber divided into two compartments?

A. No, sir.

Q. By putting in that paper it divides it into two compartments, does it not?

(Objected to by respondent as incompetent, immaterial, and irrelevant and assuming something not in evidence; that the paper was put there to show two compartments; that the witness has merely testified the paper showed the latter as it came down from the 38-foot level to the bottom of the ore chamber at the time of the visit, in 1884, of Mr. Yerington and the witness.)

A. Certainly.

Q. If that paper represents the ore chamber as it appeared in 1884, when you visited the place in company with Mr. Yerington, will you show or tell me how you could get from winze No. 2, or the 38-foot level, into the ore chamber; look at it, and see if there is

1322 any road left open, and if you have not stopped every possible way of getting in.

A. I think a man could squeeze himself in.

Q. Is that the way you got in?

A. No, we did not have much room.

Q. The fact is that that paper does not represent the chamber as it was at that time?

A. You might squeeze in.

Q. You might stand on your head, I know; I am asking you whether that model, as it now stands, represents the ore chamber as it appeared to you in 1884?

A. On this portion it does.

Q. I ask you if it represents the ore chamber?

A. On this side of it.

Q. I ask you if it represents the ore chamber as it then stood?

A. I say, yes.

Q. Point out how you could get from the winze into the ore chamber.

A. There was no winze No. 2, only above the 38-foot level.

Q. How would you pass from winze No. 2 or the 38-foot level into the southeast end of the ore chamber?

A. Because there was a small winze.

Q. Is there any passageway from the 38-foot level or winze No. 2 down into the southeast end of the ore chamber?

A. There is just a small one here now.

Q. Where?

A. Here.

Q. Look in there and show me how you are going to get from there down into the ore chamber?

A. There is a very small opening.

1323 Q. Is that the opening through which you passed to get to that end?

A. The opening was larger than that.

Q. I ask you if that was the opening through which you went into the northeast end of the ore chamber? Answer my question.

A. The opening was larger than what it appears there.

Q. I am not asking you that. I ask you if that is the opening through which you passed into the ore chamber?

(Objected to by respondent as immaterial, irrelevant, and incompetent.

A. Now you are giving me a question; how can I answer it?

Q. If you got in you can tell me.

A. We went down through the winze.

Q. Did you go down through the hole to which counsel has called your attention?

A. We went down through a hole here.

Q. Did you go through a hole from the 38-foot level—the one to which your attention has been called by counsel—down into the ore chamber?

A. Certainly; I went through a hole from the 38-foot level.

Q. Is it the particular hole that counsel has called your attention to that you passed in going from the 38-foot level to the northeast side of the ore chamber?

A. We passed through a winze sunk from the 38-foot level down.

Q. Answer my question. Did you pass through the hole in-

1324 dicated by counsel from the 38-foot level down to the northeast end of the ore chamber?

A. As indicated by counsel here, I should have to squeeze myself very much to get through it.

Q. I do not care how you squeezed yourself. I simply asked you the question whether you got through or not. I do not know the size of the hole.

A. We went down there.

Q. That is the hole through which you passed, is it?

A. I do not know if it is the hole; maybe I could pass through it.

Q. Did you pass through a hole in a corner next to winze No. 2 and which leads from the 38-foot level in the first section from winze No. 2?

A. Certainly; we went down.

Q. Through that hole?

A. Something similar.

Q. Is that the hole I am now pointing to, from the bottom of the 38-foot level?

A. I went down to the 38-foot level.

Q. Is there more than one hole in the 38-foot level, as indicated by respondent's model?

(Objected to by respondent on the ground that the model speaks for itself as to what it represents, and the question is immaterial, irrelevant, and incompetent.)

Q. I ask you now to point out where there is any hole, except the one referred to by counsel, leading from the 38-foot level, as distinguished from either of the winzes. Show me any hole except the one referred to by counsel.

1325 A. There is a hole, whether it is represented there or not.

Q. I asked you to point me out one. Is there any there?

A. I do not know that it is on the model, but there is a hole in the mine.

Q. There is a hole in the mine which does not appear on the model?

A. I do not see it here.

Q. And which leads from the 38-foot level into the northeast end of the ore chamber; is that the fact?

A. Which leads to the northwest end.

Q. Could you go from the northwest end to the northeast end without going through the line marked by the paper?

(Objected to by respondent as immaterial, irrelevant, incompetent, and not in cross-examination; that the paper has merely been placed there to represent the direction of the ladder upon which the witness descended from the 38-foot level to the bottom of the chamber; that the question assumes something not in evidence and misleads; that no testimony has been offered to show that the paper represents any wall.)

A. I think I could.

Q. Where?

A. On this side of the paper from the northwest.

Q. Does not the paper extend from the 38-foot level down to the bottom of the ore chamber?

A. Pretty nearly so.

Q. That paper is intended to mark the floor or foot wall of
1326 the incline from the 38-foot level down to the northeast end of the chamber, is it not?

A. That is what I understand.

Q. And the works which lay to the northeast of that paper were not then made, were they; I mean in the ore chamber?

A. No; they were not then made. This model, I understand, is made ten feet to the inch, and I think I could go through there at that rate without putting on that paper.

Q. The trouble is, in putting that paper on, you have covered over the passage-way from the winze to the chamber?

A. It nearly covers it.

Q. It does cover a portion of the passage-way from winze No. 2 to the ore chamber?

A. Nearly all.

Q. And in that the paper is misplaced?

A. I did not place it.

Q. Counsel for respondent put it on. I understood you to say that the ladder which extends from the 38-foot level down the incline and into the ore chamber stood on ore; was that loose ore or rock in place?

A. Rock in place.

Q. Did you examine the foot of the ladder at that time for the purpose of determining what the ladder stood on?

A. I do not know; I examined the very rock that the ladder stood on; I *did* around in different places.

Q. You did dig around at different places on that occasion at the time Mr. Yerington was with you. You say the ladder stood on ore?

A. Yes, sir.

Q. Do you mean to say you dug around in different places to see what the ladder rested on?

A. I pulled out some rock.

1327 Q. Did you or not do any work of any kind or character in the way of excavating dirt or moving dirt around the foot of that ladder or at any other point in the ore chamber on that occasion?

A. The ore in that chamber was of such a quality——

Q. I ask you if you made any excavation around the foot of that ladder, whether it stood on ore or waste?

A. The ore was in such a condition that you could pull it out with your hands.

Q. Read the question, Mr. Examiner.

A. I understand the question.

Q. Then why don't you answer it; did you or not do any excavating or make any examination for the purpose of determining whether the foot of that ladder stood on ore or waste?

A. Not in the immediate point where the ladder stands.

Q. Then if you did not examine you do not know?
A. Not at that time; I did before; I did examine it before.
Q. How long before?
A. It may be two or three or four months.
Q. What occasioned you, then, to examine the foot of that ladder to see what it stood on?
A. Because Mr. Silva wanted me to go and look at it.
Q. Did you make a special examination of that spot to see what the ladder stood on?
A. That spot and around.
Q. Did you make a special examination of the place where
1328 the ladder stood to determine whether it stood on ore or waste?
A. I made a special examination and examined.
Q. I ask you if you examined the spot where that ladder stood?
A. There is not a doubt but what I did examine that spot.
Q. I ask you if you did or not. Give me a direct, plain answer. Did you or not—yes or no?
A. How am I going to say yes or no?
Q. Did you examine the place upon which that ladder stood for the purpose of determining whether it stood on ore or waste? You can say yes or no.
A. I did not examine, probably, on that very point.
Q. Answer yes or no. Did you or not examine that spot? That is a plain question. Did you not give this answer in a former examination and in your examination yesterday: "The foot of the ladder in the ore chamber rested on ore;" did you not so state?
A. I believe I did.
Q. Did you ever examine where that ladder stood for the purpose of determining whether it rested on ore or waste?
A. There was ore all across.
Q. Answer yes or no.
A. I say yes.
Q. Do you know whether you did or not?
A. I examined every point in it.
Q. Do you know whether you did or not?
A. I say yes.
Q. You now positively swear that you did?
A. Yes, sir.
Q. Have you not sworn over and over again on the former trial and on this that you never did examine that floor to determine exactly what was there?
1329 A. I do not think I have.
Q. Have you not stated that the floor of that chamber was made up of lime and quartz?
A. This is speaking of a previous time; not the time when Mr. Yerington was there.
Q. When Mr. Yerington was there it was of quartzite and lime?
A. There was ore, a portion of it, and some waste below it.
Q. Did you say that Mr. Forman took samples from the bottom or floor of that ore chamber?

A. He took samples.

Q. I ask you now a plain question. Did he not take samples from the floor of that ore chamber?

A. Yes; he took samples.

Q. Did you see him do it?

A. Yes, sir.

Q. Did he pick it out of rock in place or did he take samples of loose rock on the floor of that chamber?

A. He took it out from rock in place.

Q. Did you see him when he did it?

A. Yes, sir.

Q. Did you see the spot from which he took it?

A. Certainly.

Q. Where was it?

A. Everywhere round the chamber.

Q. I ask you where it was?

A. I made a mark of it yesterday on a piece of paper you have got there.

Q. Did you not state yesterday that he did not take it from the floor; that he took it above the floor and on the sides, but that he did not take it from the floor, because the floor was covered so that it could not be seen?

1330 A. No; there is a portion of the floor——

Q. Do you swear that you did not so state it?

A. A portion of the floor is covered.

Q. Did you not make the statement that I now put to you?

A. I am making the same statement over again. A portion of the floor was covered.

Q. Did you not state yesterday and on the former trial, to which your attention has already been called, that he did not take samples from the floor, because they could not cut across the floor, for the reason that it was covered and could not be seen?

(Objected to by respondent as irrelevant, incompetent, immaterial. If it is for the purpose of impeaching the witness and the statements are in writing the writing must be shown to the witness before any question can be put to him concerning the statement, and if he made such a statement he is entitled to look at it and examine it before answering any questions concerning it. If it is not for the purpose of impeachment it is irrelevant, immaterial, and incompetent.)

A. I answer it *that* same as I answered yesterday. There is a portion of the bottom of the winze covered. The upper portion was not.

Q. Did you not state yesterday and on the former trial that no samples were taken from the floor, for the reason that the bottom of the floor was covered and could not be seen?

(Same objections by respondent.)

1331 A. No, sir; I did not answer any such thing.

Q. You now deny that you ever made such an answer?

A. Yes, sir; I do; I claim that there is a portion of it covered.

Q. I ask you not what you claim, but whether you gave such an answer?

(Same objections by respondent.)

A. I answered the same; a portion of the floor was covered.

Q. Did you not, on the former trial, to which your attention was called, testify in answer to this question: "Why did you not determine what the bottom or floor of that ore chamber was? A. I could not see the bottom." Did you not so state?

(Same objections by respondent.)

A. Yes; I testified to that portion of it.

Q. Why could you not see the bottom—because it was covered with waste, or ore, or what?

A. The very bottom of it was covered with waste.

Q. Did Mr. Forman take samples from that part?

A. He could not, from that very point.

Q. That was at the very bottom of the chamber?

A. From that very point he could not.

Q. The bottom is the very point I am inquiring about.

A. If you had asked me that question direct, as you did then, I would have answered it.

Q. You say that the ore on which the ladder stood when you visited the mine in company with Mr. Yerington has been
1332 taken away?

A. Yes, sir.

Q. And reached the floor you have already described?

A. Yes, sir.

Q. You say that the chamber is longer now than when you examined it in 1884 with Mr. Yerington?

A. Yes, sir.

Q. At which end has the excavation been made—at the northwest or northeast?

A. On both ways.

Q. You mean to say that the chamber has been enlarged at the northeast end?

A. Both sides—northeast and northwest.

Q. Is it not the fact that the little shaft has been in the same place all the time. Look at it; is it not where it always was when you saw it?

A. This was the first time that I saw it, when I was there last.

Q. Why did you not see it before?

A. I have never seen it before.

Q. Did you not state that you saw Mr. Forman down in that little shaft on the former trial?

A. I do not know whether you could call it a shaft; there is a little hole there.

Q. Did you ever see that there before?

A. I see a little hole there when Mr. Yerington was there; it showed from the south end of it.

Q. Is it not in the same place as when you saw it first; has that been changed?

A. There is more work done there.

Q. Is not the mouth of that hole in the same place as when you first saw it?

A. I cannot tell exactly.

1333 Q. Was it not at the northeast end? Has that hole been moved around or the surroundings moved from the hole?

A. The hole may be made larger.

Q. Do you know which? Has the hole been moved about or have the surroundings been moved?

A. I do not know, because I have not seen any work done.

Q. Are you prepared to say any excavation has been made on the southeast end since you visited the place with Mr. Yerington?

A. It shows more of an excavation now than it did then.

Q. You say, then, ground has been excavated there?

A. Yes, from what I have seen of it.

Q. How much?

A. I could not judge; two or three feet.

Q. The enlargement has been principally at the northwest end?

A. Yes, sir.

Q. You stated there were two feet of ore in the Modoc winze?

A. Yes, sir.

Q. Did you go to the bottom?

A. Yes, sir.

Q. When?

A. On June 7th.

Q. Did you not say yesterday you did not go to the bottom of the Modoc winze or hole?

A. I did not say any such thing.

Q. What did you find in the bottom?

A. Two feet of low-grade ore.

Q. What kind of ore—iron?

A. Iron mixed with carbonate.

Q. What proportion?

A. Running in bigger proportion than the ore.

Q. What proportion would the lead ore stand to the iron?

1334 A. I think, probably, one-third.

Q. Any waste in the bottom?

A. I did not notice any.

Q. Could you not tell whether there was waste in the bottom of that hole if you went down in it, or whether it was clean, so you could examine the bottom?

A. It was very near clean. There was so little waste you could not perceive it.

Q. Did you pick in the bottom to see whether it was iron, lime, or ore?

A. Not in the very lowest portion.

Q. Do you not call the bottom part near the lowest portion of it?

A. Pretty near.

Q. Did you pick in the bottom, at any point in the bottom, for the purpose of determining whether the bottom was in ore or in lime?

A. I knocked off a little.

Q. Cannot you answer that question yes or no? Did you or not?

A. Close to the bottom; not in the immediate bottom.
Q. Did you do it on the bottom?
A. Yes; it was on the bottom.
Q. Did you pick in the bottom of the Modoc hole for the purpose of determining whether the bottom consisted of lime or ore?
A. I knocked off some.
Q. Will you answer that question yes or no?
A. Yes, sir.
Q. What did you pick out of the bottom?
A. I knocked out some carbonate ore.
Q. How much carbonate ore?
A. I did not knock out much.
Q. Did you bring any with you?
A. No, sir.
1335 Q. Were you not trying to sample the mine?
A. No, sir.
Q. Did you not go there partly to sample the mine?
A. I do not know.
Q. Did not your party bring several samples from the mine?
A. What they did was not what I did.
Q. I am asking you what was done by you and what you observed others of your party doing.
A. I am speaking of what I did myself.
Q. Did you not, and your party, go there and take samples, and did not each one of you put down in your books the points you visited and the places from which you took samples?
A. Certainly.
Q. Then one of your acts was to sample the mine?
A. My act was to go and examine the mine and see how it looked.
Q. Why did you put down in your book the points which you visited and from which you took samples if it was not for the purpose of showing that you had sampled the mine?
A. I did not put down in my book any samples that were taken.
Q. Have you got that book?
A. Yes, sir.
Q. Where is it?
A. In my pocket.
Q. Let me see it.
A. There it is.

(Counsel for respondent objects to the paper being shown to counsel for complainant unless he desires to put it in evidence.
1336 (Counsel for complainant states that he desires to see the memorandum which the witness made to see if it contradicts or corroborates the witness' statements.)

A. There it is (handing book to counsel for complainant).
Q. Did you take any samples yourself?
A. I did not.
Q. Why did you not bring some samples of the vein matter or iron rock, or a sample of the rock which you call iron and ore mixed, so that it could be seen in what way they occurred?

A. Some of the others took it. I did not think it was necessary for all of us to take them.

Q. Was anything said during your trip as to where samples should be taken from?

A. No, sir.

Q. Mr. Silva was there all the time?

A. Yes, sir.

Q. Did he say anything about sampling?

A. I never heard him say a word.

Q. Did he assist in taking samples?

A. No, sir.

Q. Did he by any action indicate from which points samples should be taken?

A. I did not see him.

Q. What do you call ore?

A. Any material that carries metal.

Q. No matter how little or how much?

A. Yes, sir.

Q. Everything is ore that contains metal, is it, with you?

A. Yes, sir.

Q. All mineralized rocks are ore?

A. Not all mineralized rocks. You may get country rock mineralized and stained with ore.

Q. All rocks are mineral, are they not?

A. That is something I cannot answer.

1337 Q. What do you mean when you say that you would call all rocks containing mineral ore?

A. That is, from the ledge matter.

Q. Would they not be ore if they did not come from the ledge?

A. Certainly, if it was ore.

Q. The fact whether it comes from the ledge matter is the difference whether it is ore or not?

A. It does not make any difference. If it is ore, it is ore.

Q. What is there about the substance which you call ore which distinguishes it from other rocks, in your estimation?

A. For lead ores, partly by the weight and partly by the appearance of the rock.

Q. Do you call all rock ore from the vein which carries silver?

A. Certainly I do.

Q. Whether it carries little or much?

A. Little or much.

Q. Do you call all rock ore which carries lead, without regard to whether there is little or much silver in it or little or much lead.

A. Yes, sir.

Q. And it is in this sense that you speak when you speak of ore in the Stirling mine?

A. What I consider ore is anything that carries metal in it of any description.

Q. And it is in that sense that you speak of ore in the Stirling mine, is it not?

A. Certainly.

1338 I wish to add to the 1st answer, on page —, so as to read: "As I told you before, I have never made any assay," the words "for pay;" also change the second answer, on page —, to read, "Ounces of silver. I do not know myself that I tested for lead, because I was satisfied there was considerable lead in it;" also in the latter part of the second answer, on page —, make the sentence read, "There I found from four or five inches up to fourteen or fifteen inches of pretty fair, good ore;" that is the last place I visited; also change the fourth answer, on page —, to read, "I should judge from six to seven feet."

(Signed) J. E. EDDY.

1339 FRANK FITZGERALD, a witness on behalf of respondent, sworn.

Mr. MINER:

Q. State your name, age, place of residence, and occupation.
A. Frank Fitzgerald; age, 37; residence, Lookout, Inyo county, California; occupation, miner.
Q. How long have you resided in Inyo county, California?
A. Twelve years.
Q. How long have you been engaged in mining?
A. Sixteen years, off and on.
Q. Have you had any experience in lead mines?
A. Yes, sir.
Q. At what places?
A. Utah, Nevada, and California.
Q. For how long a time?
A. Off and on for the time stated.
Q. Sixteen years?
A. Yes, sir.
Q. Are you engaged in running a mine at present?
A. Yes, sir.
Q. What mine is that?
A. The Modoc Consolidated.
Q. Where is that situated?
A. In the Lookout district.
Q. What kind of ores does that mine contain?
A. Silver, lead ores, and gold.
Q. How long have you been working that mine?
A. Steady for six years.
Q. About how many men, on an average, have you worked in the mine per month during the six years?
1340 A. About thirteen, on an average.
Q. Have you been taking out ore during that time—most of the time?
A. Yes, sir.
Q. Been smelting the ores?
A. In the last four years.
Q. Do you understand anything about assaying?
A. Yes.

Q. What experience have you had in assaying?
A. I assay all my own ores and such ores as come along.
Q. For how long have you been doing that?
A. Seven years.
Q. Do you understand assaying for silver?
A. Silver, lead, and gold, and that is all.
Q. Are you acquainted with the mine called the Stirling mine, being the mine mentioned in this complaint, situated in the New Coso mining district?
A. Very slightly acquainted with the mine.
Q. Have you ever seen it?
A. I have.
Q. When did you see it?
A. On the 7th of this month. I had a memorandum, but I lost it coming in from the mine.
Q. A memorandum of what you saw in the mine?
A. Yes, sir.
Q. Who was in company with you in visiting that mine?
A. Mr. Silva, Mr. Anthony, Mr. Alexander, and Mr. Eddy.
Q. Look at Respondent's Exhibit E, which is a map, and say whether that substantially represents any portion of the workings of the mine.
A. Right here, now, I will state that I was not long enough in that mine to follow the workings. I was not over an hour and a half altogether in the mine, and I could not make a statement any way accurate at all.
1341 Q. Look at Respondent's Exhibit F, which is a model, and see if that will assist you in describing what you saw in the mine. I will state that this figure marked No. 1——

Mr. REDDY: I would like to have the witness answer the question before you begin to tell him.

Mr. MINER:

Q. Look at the model and see if that will assist you.
A. I will give the same answer as I gave regarding that.
Q. Did you go through any part of the mine?
A. Yes, sir.
Q. Just describe where you went. I will state that the figure 3 on the model represents what is called the 38-foot level, and 8 represents what is called the ore chamber.

(Counsel for complainant objects on the ground that he desires the witness to make his own statement, unassisted by counsel, and designate in such a manner as suits his own judgment and convenience the places he visited.)

Q. You can point to the model for the places you visited.

(Objected to by complainant because the witness has very frankly stated he has not made such an examination as to state whether the model or map is correct or not.)

A. I went into what is called the north drift, and on the foot wall—I judge about fifteen feet from the main tunnel—I saw a streak of ore about ten inches in width and about nine feet in length.

1342 I went into the stope in the north drift. I saw a streak of ore in that stope and raise that would average all round, for a distance of, say, twenty-five feet, seven inches. I then went into the south drift and went down winze No. 2, into the 38-foot level. I cannot very well describe that from memory.

Q. Did you see any ore at all in the 38-foot level?

A. Yes; the exact distance I cannot say.

Q. Was it in the roof or bottom?

A. In the roof and in the bottom. One place, known as the Modoc hole, I saw ore in the bottom of the hole.

Q. I will ask you to look at the model and see if the figure marked 9 would substantially represent the part of the 38-foot level known as the Modoc hole?

(Objected to on the ground that the witness has already stated he does not know whether the model is a correct representation or not, and knows nothing about the model or map.)

A. I could not say.

Q. Supposing the figure 3 represents the 38-foot level, the level connecting winzes Nos. 1 and 2, then would this figure 9 represent about substantially the place where the Modoc hole was?

(Same objections by complainant.)

A. To the best of my opinion, yes.

Q. In your opinion, what was the width of the ore in the 38-foot level?

(Objected to by complainant as susceptible of measurement and not a subject for opinion evidence.)

1343 A. I should judge the width to be about thirty inches, the length of the level.

Q. Did you measure the ore in the 38-foot level?

A. Yes, sir.

Q. Do you remember now what it measured?

A. Yes; it varied considerable. I am talking of the average width.

Q. Did you go down in what is known as the ore chamber in the 55-foot level?

A. Yes, sir.

Q. Is there anything on that model which would substantially represent the ore chamber in its relative position with winze No. 2?

A. I could not answer.

Q. Please look at the model and see if the figure 8 represents substantially the relative position of this ore chamber, winze No. 2, and the 38-foot level; not exactly, but substantially.

(Objected to by complainant as leading.)

A. I do not know.

Q. What did you see in the ore chamber, if anything?

A. I saw some ore and some waste.
Q. Ore in place?
A. Ore in place.
Q. In what place in the ore chamber did you see this ore?
A. What I should consider the hanging. I saw some ore in place.
Q. Point to the model and figure 8 and designate on which side of that model would the ore be that you saw in that chamber.
A. I cannot do it.

1344 Q. Does the figure 8 upon the model in any way resemble the interior of that chamber—in any respect whatever? Look inside of it.

(Objected to by complainant as leading.)

A. I cannot say.
Q. Does it look anything like it at all?

(Objected to as urging and leading.)

A. I have never seen the model before.
Q. I am not asking you if it is correct or not. Does the model in any way, shape, or form represent that ore chamber in any respect?

(Objected to as immaterial, irrelevant, and leading.)

A. I do not know.
Q. Was the bottom of the ore chamber square?
A. No; to the best of my recollection it was not.
Q. What place in the chamber did you see any ore?
A. On the hanging wall; I saw some ore in the bottom.
Q. At which end of the bottom?
A. I cannot tell.
Q. Was there any excavation in the chamber?
A. Yes, sir.
Q. Does this place marked 14 on the model represent a place where there was a little shaft sunk in the ore chamber?
A. I have seen such a shaft.
Q. Was it anywhere near that little shaft that you saw ore?
A. Very near it.
Q. Was it anywhere on the side of it?
A. Yes; facing the hanging of the shaft it was in the left-hand corner, facing the hanging wall of the shaft.
Q. What was the width of that ore body?
A. About twenty inches.

1345 Q. What distance in the chamber did the ore extend on the side?

A. I cannot say as to the distance. I have lost my memoranda, as I said before.
Q. I mean to what point did it extend?
A. To the best of my recollection it was about between fifteen and twenty feet. It may be more.
Q. Did the ore extend up to the 38-foot level?

(Objected to by complainant as leading.)

A. It did.

Q. Was there any connection or opening between the ore chamber and the 38-foot level?

(Same objection by complainant.)

A. Yes, sir.

Q. Could you trace the ore from the 38-foot level down to the side and through the side and to the bottom of the ore chamber?

A. Yes, sir.

Q. What was about the width of the ore on the side of the chamber?

A. I suppose I am under oath. I cannot state.

Q. About what did it average on the side of the chamber—about the average width?

A. I cannot tell now.

Q. Have you any idea at the present time?

A. Yes, sir?

Q. What was it?

A. My recollection was there was at least eighteen inches.

Q. Look at these samples of ore, Respondent's Exhibits G, H, I, J, K, L, and M, examine them, and tell me if the ore which
1346 you saw in this ore chamber and in the 38-foot level resembled the samples now shown to you.

A. Yes, sir.

Q. Was it ore of the same character?

A. Yes, sir. I would like to state I do not know anything about Exhibit I.

Q. Was there any ore in the mine similar to Exhibit I?

A. Well, yes.

Cross-examination:

Mr. REDDY:

Q. When you speak of ore what do you mean? Do you mean any rock that contains silver or lead, where they are mining for silver or lead.

A. At the present time, yes. When I speak of ores I mean ores that carry silver or lead.

Q. In speaking of ores in connection with the Stirling mine you mean any rock that contains silver or lead, without reference to its particular value?

A. Yes, sir.

Q. If it carries any lead or silver, then you designate it as ore?

A. Yes, sir.

Q. When you have spoken about ore in different points of the mine you have spoken of it in that sense, have you not?

A. Yes; I mean the character of ore that I have seen exhibited.

Q. Do you know anything about the value of those ores? Have you ever assayed them.

A. Yes, sir.

Q. That ore?

A. Something similar in character from that mine.

1347 Q. In the Stirling mine and in all other mines in which you have had experience are there not ores similar in appearance and not similar in value?

A. Yes; decidedly.

Q. In these ore streaks that you have spoken of in various places you mean the entire streak when you come to talk about the width, do you not?

A. No; I speak of what I think are ores that carry silver or lead.

Q. That is what I mean.

A. Yes, sir.

Q. There is a great deal of iron rock, is there?

A. Yes, sir.

Q. That swells the size of the streak always—the iron rock?

A. Sometimes; yes.

Q. There is a fair proportion of iron rock in these streaks mixed with the ore?

A. My examination was not critical enough to answer that question yes or no.

Q. You were an hour and a half going through all these places?

A. Yes; just about.

Q. Who called your attention to the different streaks?

A. As a general thing, I examined them myself after being shown.

Q. Who did show you these places?

A. Mr. Alexander, Mr. Silva, Mr. Anthony, and Mr. Eddy.

Q. You just examined it for a moment; just put your candle up to it?

A. I went along.

1348 Q. From that you could not determine the value or character of the ore only in a general way?

A. In a general way.

(Signed) FRANK FITZGERALD.

(A recess is here taken to to-morrow, Wednesday, June 23, 1886, at 9.30 a. m.)

1349 WEDNESDAY, *June* 23, 1886.

(Parties and counsel met pursuant to adjournment.)

FRANK SILVA, the respondent, called in his own behalf, sworn.

Mr. MINER:

Q. What is your name, age, place of residence, and occupation?

A. Frank Silva; age, 42; occupation, miner; residence, Darwin.

Q. Are you the respondent in this action?

A. Yes, sir.

Q. How long have you lived in Inyo county, California?

A. Since June, 1867.

Q. What business have you been engaged in during that time?

A. Mining.

Q. At what place?

A. Six or seven years in Cerro Gordo and the balance around Darwin.

Q. Do you know a mine called the Stirling mine?

A. Yes, sir.

Q. How long have you known that mine?

A. About 7 years.

Q. Did you ever own that mine?

A. Yes, sir.

Q. How long did you own it?

A. I owned it for seven or eight years.

Q. Did you locate that mine, or did you purchase it?

A. I purchased it.

Q. From whom?

1550 A. From a man by the name of Stirling and Edwards and Dunlap.

Q. In what year did you purchase it?

A. I think in 1874, if I remember right. I do not exactly remember.

Q. State when you first met Mr. Yerington, if you ever met him, in connection with this matter, and whether you visited this mine with him, and at what time.

A. The first time I met Mr. Yerington was in Darwin, in John Eddy's store, in the month of January, 1884.

Q. Go right on and state what was said. Tell the whole story about visiting this mine.

A. Mr. Yerington told me that he came down to Darwin with Mr. Forman to see about the Stirling mine. He asked me if I was willing to go out to the mine the next morning. I told him that I did not care about going out, for the reason I had considerable bother with several parties on the same line of business. He requested me again, and I said I would go out next morning, which I did. He and Mr. Forman and Mr. Eddy and myself all went out and went into the mine and examined all the upper works and what you may call the lower levels; all the work that was done in the mine at the time. Mr. Yerington took about fourteen or fifteen samples that day, with Mr. Forman. Each sample was separated by itself.

Q. Describe the visit and what was said and done at the different places.

A. After we went into the mine we went into the north drift on the tunnel level.

1551 Q. Commence first at the point of location.

A. I am speaking of after we went in the mine. Afterward we examined the south drift and the upper raise, and took some samples from there. Then we went down winze No. 2, and we examined the 38-foot level, and there Mr. Yerington and Mr. Forman took different samples. From that we went down to the ore chamber. After we got down to the ore chamber Mr. Forman and Mr. Yerington asked me to get some tools, so that they could take some good-sized samples. Mr. Eddy went up to the 38-foot level and got a pick, took it down to the chamber, and gave it to Mr. Forman. Afterwards Mr. Forman did the picking and Mr. Yerington held the box to take the

samples, and I stood back on the ladder with Mr. Eddy and see him take the samples. They took five or six samples from there, according to my recollection. Then afterwards we came up to the 38-foot level again. Afterwards Mr. Yerington asked me to go down with them again to the ore chamber, which I did, and we stopped down there about three-quarters of an hour. They took a couple more samples, and then we came to the top—I mean we came out of the mine. After we got out on the dump Mr. Yerington told me that he thought the ore would be very easily got out, and asked me also how much it would cost a ton. I told him I thought that it could be taken out for four dollars a ton. He then says to me: "Silva, if you had this prospect in some other place you could demand a fancy price for it, but as the county stands, with such a black eye,
1352 all the mining men investing money in it have lost it, and I cannot pay no high price for the mine. If I do buy this mine I want to buy it to help run the ores up at the Elna furnace, so I will have freight for the railroad, and at the present time there is lots of ore coming to the Elna furnace from Garfield district, Deep Spring valley, and the White Mountains, and different other directions, but all are dry ores. I want to buy this as a flux to help run this ore." I said: "Mr. Yerington, this way; if you will allow me to tell you my views of the business I will speak something." He said, "Go ahead; I would like to hear from you what you have got to say." I says: "Mr. Yerington, you make remarks about the county having such a black eye and everybody making failures. Now, I must tell you before you buy this that if you ever do this business and attempt to ship this ore to the Elna furnace, and haul it in the first place thirty-six miles through this heavy road, and then haul it from Keeler to the Elna furnace, and then pay probably twelve ounces or more to the furnace, you are going to make just as bad a failure as ever was made in Inyo county by any one." Mr. Yerington says: "Silva, the reason I want to buy this is to help the other ores, and if I do not make it pay one way I will make it pay the other." I made the remark that I thought I said too much to him. Then Mr. Yerington asked me if there was water enough out there to run a furnace. I told him I had five springs located. He asked me how far they were. I told him there were three in a straight line, about a mile and a half, and to go round the trail
1353 about two miles and the other two about five miles from the mine. He asked me what charcoal would cost, and I told him I thought you could get the coal for twenty-one cents. He also asked me about wood. I told him five or six dollars a cord. Afterwards he said, "I will have a talk with you after getting to Darwin." I said, "All right." We left the mine, came to Darwin, and after we got in Darwin Mr. Forman and him went and got some dinne or lunch. They said to me, "I would like to see you in about a half an hour." I said, "All right." Then we met again. We met at Eddy's store. He asked Mr. Eddy if he had a private room, so that he could go and have some talk with me. Mr. Eddy said we could go into his bedroom and have a talk. I went in there with Mr. Yerington and Mr. Forman and Mr. Eddy. Mr. Yering-

ton says to me, "Silva, I will tell you what I will do. I will give you ten thousand dollars for the mine if you will throw in the extension and all the water, and I cannot pay you no more. If you want the ten thousand dollars, we can go up together to Carson. All we have got to do is to see about the title in the first place, if it is clear." I told him if I wanted ten thousand dollars from him, I had an offer from some parties authorized by him at least three times; so I did not accept the offer. Afterwards he asked me how the title stood—if it stood clear. I told him that the title was clear. He asked me if I had an abstract of the title. I said I had an
1354 abstract of the title. He asked me if I was willing to let him have it. I told him, "Yes;" so I went up to my house, got the abstract of title, and I bring it down to this room and I gave it to him. Then Mr. Yerington says, "I am going to start up to Keeler to take the train this evening, and when I get up to Independence station I am going to Independence to examine this title; and if I do not, after I get to Carson I will send down an agent to examine this business, and afterwards I will write you this letter, and I will make you an offer for the mine." I told him he was welcome to the title. I said there was no use for him to make me an offer of ten thousand dollars, for the reason that I had that offer from his agents several times, which I had refused. Then he made the remark, "I will make you an offer, anyhow." I said, "All right." He left Darwin and went up to Carson. In about a couple of weeks I received a letter from Mr. Yerington, making me an offer of ten thousand dollars. About a week afterwards I took the train and I went up to Carson. I met Mr. Yerington in Carson, and he says to me to go to his office the next day, between ten and eleven, which I did. After I got to the office he told me he could not do any business about the mine, for the reason that there was a bond for a deed that was not clear He says they have to write to San Francisco, to a lawyer, a friend of his, to see a man named Hamilton about this bond for a deed. I told him all right. He wrote down, and I waited for an answer. The answer came back, stating everything was settled about the deed. I paid for the trouble—twenty-five dollars. The
1355 next day I went to the office again. We had some talk about wood and furnace and water and hauling ore and packing and one thing another and all kinds of talk. Mr. Yerington asked me something like this: He says, "Silva, I want you to go to work for me." I says, "I don't think I can go to work for you, because I have got some other claims down there that I would like to go and prospect." He says, "You can wait a few months and prospect for yourself, but at the present time I would like for you to go to work." I told him all right. He said, "The first month I will give you a hundred dollars. Afterwards I will do better." So I agreed to go to work for Mr. Yerington; also Mr. Yerington asked me if I had shown him all the work I had done in the mine. I told him that I had shown him all the work that was done in the mine by me or by my direction. Mr. Yerington says, "All right. How do you want your money?" I says, "I want my money to be paid here." He

says, "All right. What do you calculate to do with it?" I says, "I will take enough with me to pay my debts and I will leave the balance in the bank." Mr. Yerington said that was satisfactory, and he went with me to Wells-Fargo's, and I deposited the ten thousand dollars, and I requested the agent, the cashier, to let me have twenty-five hundred dollars and I would leave the balance there on special deposit, which I did. I came down to Darwin. I went out to help survey the mine for Mr. Yerington, and afterwards I went to work for him in the same mine.

Q. In what capacity?

A. As boss.

1356 Q. Foreman?

A. Yes; I worked sixteen days, I think, and I got sick.

Q. State what your sickness was and how you got sick.

A. I got rheumatism. I stayed in Lone Pine about six weeks.

Q. How did you get sick with the rheumatism? Describe the circumstances.

A. After I sold the mine, when I went down in the train we got fast in the snow at Benton, and we stopped there about six days, shoveling snow. I think that is how I got the rheumatism. We had no blankets and no grub either. Afterwards I came down, as I said before, to Darwin.

Q. Did you pay your debts with this twenty-five hundred dollars that you got from the sale of the mine?

A. I paid pretty nearly all.

Q. Does this represent what you paid (handing a paper to witness)? State whom you paid and how much you paid to each man out of this twenty-five hundred dollars.

A. I paid Mr. Yerington $25 in Carson, lawyer's fees. I paid John Eddy $1,200. I paid Joseph Enos $450, which I sent down to Gorman's Station, Los Angeles. Wells-Fargo's book will show it. J. J. Gunn, $40; White and Anthony, $80; R. Diaz, $80; Edwards, $20; Strauss, I am not sure, I think $20 or $25. I paid Doctor Collyer $30 in Lone Pine.

Q. Was that for your sickness when you had this rheumatism?

A. Yes; I paid Manuel Figaro $170, money borrowed.

1357 My expenses in Lone Pine at the time I was sick for board and lodging, about $60, and paid my fare up and down. I paid Mr. Harmon, in Darwin, $50, and several other little dabs.

Q. How much were you owing Eddy at the time you made him this payment of $1,200?

A. $1,564; a few cents more or less.

Q. Did he have any security for his money?

A. Not at all, that I know of.

Q. This Enos that you paid, how long had you been owing him that money?

(Objected to as irrelevant, immaterial, and incompetent.)

A. The money was money that he lent me to buy this mine.

Q. Did Enos have any security for it?

A. No, sir.

Q. How long had you owed it?

(Objected to by complainant as immaterial and irrelevant.)

A. About eight years.

Q. Did you pay all you owed at the time? If not, state why.

(Same objection by complainant.)

A. My calculation was not right when I came down with the money—when I drew the money; I came out too short.

Q. How was it that you came out short?

A. For the reason that after I got to Darwin and paid my debts I found bigger bills than I expected to have.

Q. I would like you to look at this model, Respondent's
1358 Exhibit F, and tell me if there is anything on it that represents the ore chamber at the time of that visit.

A. Yes, sir.

Q. Does No. 8 represent the ore chamber?

A. Yes, sir.

Q. Describe the work which you have done in any region of the ore chamber before Mr. Yerington visited the mine.

A. I sunk winze No. 1 about 44 feet deep and I run about 12 feet through line and I got into the ledge. After I got to the ledge I drifted both ways, northerly and southerly, and running southeast upon this ore vein, and I came to a place where the ore was about three feet in thickness, so I sunk down an incline about 15 feet deep; afterwards I raised up from this incline to the level of the main tunnel.

Q. What is the upraise marked?

A. Winze No. 2. Afterwards I came back to winze No. 1 and I sank it down about forty feet deeper, and I run a drift west about twenty-five feet deep or thirty.

Q. Is that all marked on the model No. 6?

A. Yes, sir. At the end of that drift I struck a ledge of quartz and lead mixed with it. I cut that and I came back in the vicinity of the bottom of this ledge No. 1, and I followed a streak of ledge matter and run lead in some places. I run into it sixty or seventy feet; I am not sure of the distance.

Q. Is that place marked on the model that you run 60 or 70 feet?

A. Yes, sir.

Q. What is the place?

1359 A. No. 4; that was the place where I was working at the time Mr. Yerington's experts went down there to examine the mine. I was running that work for the purpose of tapping this ore body that I had found in winze No. 2.

Q. The ore body on the model marked No. 8, on the 55-foot level?

A. Yes, sir.

Q. After making this winze, which was the first work in the chamber, did you do all this other work after discovering this ore in the chamber—the work which you have described as being below the 38-foot level?

A. That was done after I quit the ore chamber.

Q. What was the size of the chamber at the time of Mr. Yerington's visit? Describe it.

A. The size of the chamber at that time was about seven or eight feet one way and four or five feet the other.

Q. What was the height of it from the 38-foot level down to the lowest part of it?

A. I never measured; I think about 16 or 18 feet.

Q. From the foot wall to the hanging wall of that inclined winze, called the chamber, when you first did the work in it, what was the distance?

A. About seven or eight feet.

Q. And the width of it from side to side, northeast and southwest?

A. Between four and five feet.

Q. Did you go down on the ledge?

1360 A. I sunk down on the ledge.

Q. What was the course of the ledge?

A. About forty degrees; I cannot exactly say.

Q. Was the foot wall of the winze—namely, this chamber—at the time of that visit, an incline or not?

A. An incline of about forty degrees.

Q. How did you get down into the chamber?

A. I got into the chamber by sinking down.

Q. How did Mr. Yerington, Mr. Forman, Mr. Eddy, and yourself get down into that chamber?

A. By a ladder.

Q. Is there anything on this model to represent that ladder?

A. Yes, sir.

Q. What is it?

A. That piece of paper marked 15.

Q. At what angle did this ladder come down?

A. About forty degrees.

1361 Q. What was the length of that ladder from the top of it to the bottom of it?

A. About 75 feet.

Q. I am talking of this little piece of paper No. 15?

A. Probably 12 or 15 feet.

Q. How was it from the bottom of the ladder to the southeast end of this chamber at the point marked 14 on the model?

A. Between 5 and 6 feet.

Q. Did Mr. Yerington and Mr. Forman examine that space from the bottom of the ladder to this southeast end of the chamber—that four or five feet of space?

A. He did.

Q. Has there been any work done by you in that space; has there been any excavation made by you?

A. There was a little excavation made at this point marked "14."

Q. Did you make that?

A. I did.

Q. Before Mr. Yerington visited the mine?

A. Yes, sir.

Q. What was the size of it at that time?

A. Probably three by three; something in that way.
Q. In the square?
A. Pretty near square, I guess.
Q. About how deep was it?
A. From a foot and a half to two feet.
Q. Could that be seen at the time you visited the mine with Mr. Yerington?
A. Both of us were in it.
Q. Who was in it?
A. Mr. Yerington and Mr. Forman.
Q. Did they take any samples out of that chamber at that visit?
A. They took 6 or 8 samples.
Q. Did they take anything from the neighborhood of this little shaft marked "14?"
A. They took some from the northeast corner.
1362 Q. Are you positive that that little shaft was open so that it could be seen at the time Mr. Yerington visited this mine?
A. It was open enough to be seen, and both stood in it; there was a little dirt in it that fell from the side.
Q. What was the character of the ore in this chamber; was it of a dry or wet nature?
A. The ore was generally dry.
Q. Was it a kind of a character that it slacked and fell down?
A. In some places it was liable to and in some places it did not.
Q. What was back of the ladder marked "15" on the model, if anything; what did it rest on?
A. The ladder was resting on ore.
Q. At what distance did it rest on ore? State the extent of that ore that you knew at that time.
A. It rested on ore all the way down.
Q. Did they take any samples out from the neighborhood of the level?
A. Yes; they took two samples back of the ladder.
Q. Did this ore back of the ladder extend down to what was then in the bottom of the chamber?
A. Yes, sir.
Q. Did Mr. Yerington or Mr. Forman ask you any questions about the bottom of the chamber at that time?
A. Mr. Yerington and Mr. Forman after they got a pick down there and a hammer went and took a sample across that bottom and behind the ladder and on the side of the chamber.
Q. What did they say to you, if anything, about the bottom?
A. They asked me what I thought about the prospect of the ore body. I told them I thought it would be very extensive, for
1363 the reason that it went back, and sink that winze and run that drift to tap it.
Q. What winze and drift do you refer to; what is the number on the model?
A. I mean the winze No. 1 and the lower drift.
Q. No. 4?
A. Yes.

Q. And No. 6?

A. Yes, sir.

Q. Do you remember what Mr. Forman said to you when he was in this chamber speaking about the bottom of it?

A. Yes, sir.

Q. What did he say?

A. I cannot tell exactly what he did say.

Q. Did Mr. Forman make this remark to you at that time or in substance: "Silva, it is a suspicious circumstance to a mining man to see loose dirt lying on the bottom of this place; what is there underneath this loose dirt?"

A. There never was a word said about that. They asked me this, What I thought of the ore body, and I said I thought it would be extensive.

Q. Did you think so at the time?

A. Of course I did. I think so yet.

Q. Did you give your opinion? Did Mr. Yerington give his opinion and Mr. Forman give his opinion about the ore body around the chamber?

(Objected to by complainant as leading.)

A. The opinion was, the way they spoke to me, that by taking most of the ore they could see in the upper works and round the chamber on the 38-foot level they would have lots of ore to
1364 help run this other ore above. That was about the opinion I heard from them.

Q. Was what was then the bottom of the chamber at that time covered up or not with loose dirt?

A. Down this little excavation there was some dirt.

Q. This little place, marked "14?"

A. Yes, sir; but it had been dropped from the sides by working above in different places.

Q. Could the bottom of the chamber be seen for the most part?

A. Yes, sir.

Q. And did they take the samples from the bottom of the chamber?

A. They took the samples all through it. Mr. Yerington and Mr. Forman scratched with their own hands some of the dirt that was lying in the bottom of this winze, close to the excavation marked No. 14. The winze stood this way, in the very bottom.

Q. Then, commencing at the excavation marked "14," did the lower part of the chamber have a slant or an incline?

A. About 40 degrees.

Q. Did you do any work in that chamber which you covered up and concealed from Mr. Yerington, Mr. Forman, or any other persons?

A. I did not do any work at all or conceal anything.

Q. Did you drill any holes in that chamber in any place which you afterwards concealed?

A. No, sir; I never drilled any holes in that mine, except what I had to do as a miner.

Q. What tools did Mr. Yerington and Mr. Forman have to use in this chamber at the time of this visit?

A. They had a prospecting pick themselves.

1365 Q. State if there were any other tools.

A. That is all they had themselves, that they brought with them; afterwards they got a miner's pick and hammer.

Q. Who got the pick for them?

A. J. C. Eddy.

Q. Now, at the point of location in this mine, what was the conversation about the work done there between you and Mr. Forman and Mr. Yerington?

A. Me and Mr. Forman and Mr. Yerington went to the point of location, examined the croppings and also examined an open cut and a little tunnel that they run northeast from this cut, and afterwards Mr. Yerington asked me if that was all the work that was done there. I told him yes. He says, "Why don't you work in it?" I told him the reason was because I thought it was a better place to start a tunnel, which I did, and tapped the ledge, for the reason I had on the surface in different places from six inches to a foot of very nice carbonate ore that I expected to cut through the tunnel.

Q. At this point of location did he ask you whether that was all the work that you had done there, or did he ask why you did not work at that point sunk there?

A. Mr. Yerington asked me if he had seen all the work that was done at that point. I told him yes.

Q. Had he seen it all?

A. No; he did not.

Q. Was there any work there that you knew anything about at that time?

A. No, sir; I never did a minute's work there.

Q. Except what was there to show. Did you do any work there at that point yourself?

A. I never worked there a single moment.

1366 Q. Had that work at the point of location been done before you bought the mine?

A. Yes, sir.

Q. How long had you been using that point of location for any purpose?

A. I used that as a cooking place right at the beginning, after I bought the mine.

Q. For how many years, about?

A. 7 or 8 years.

Q. Did you know there was a little shaft sunk down at that point when you bought the mine?

A. No, sir.

Q. Did you know that at the time when you told Mr. Yerington that it was all the work that was done there?

A. I told him what I thought it was.

Q. You did not know anything about that shaft?

A. No, sir.

Q. When did you first find out there was a shaft sunk at that point?

A. After I was arrested I heard some parties say that I had made an excavation there and had filled it up, which I was very much surprised at when I heard it. Afterwards I went out to the mine and see it and then I was satisfied there was an excavation done by some one and filled up.

Q. Did you find out who did it?

A. Yes, sir.

Q. How did you find out who did it?

A. I thought the only way to find it out was to hunt up some of the locators and inquire about it.

Q. Did you inquire of any one?

A. I went down to Lone Pine to see Mr. Edwards about it. I asked him if he ever did any work outside of what it was at the time I bought the mine, and I told him about this shaft, and he said he sunk it himself and filled it up himself. I told him I was
1367 very glad about that for the reason that I thought I was in a bad fix.

Q. Did you drill any holes in this mine and fill them up?

A. I never blasted or drilled any there, except what was required as a miner.

Q. Did you tell Mr. Yerington how many tons of ore was in the mine? State how you told it.

A. Mr. Yerington asked me what I thought of the amount of ore that could be taken out. I told him if he had a furnace to work the ore close by there they would probably get out a thousand tons of ore if he started in and worked the mine as a mining man.

Q. During the time that you owned this mine did you get any ore out of it and sell it?

A. Yes, sir.

Q. Is that a statement of about what you got out (handing a paper to the witness)?

A. That is about it.

Q. State what you got out.

(Objected to by complainant as immaterial and irrelevant.)

A. 160 tons (soft, $2.50), $400.
100 tons, 15. 1,500.
6½ " 59.53, 389.87.
12 " 73.53, 882.36.
36 " 4.00, 136.00.

Q. Is there a place on that mine known as the "Modoc hole?"

A. Yes, sir.

Q. Is there anything on the model to indicate the relative position of that hole?

A. Yes, sir.

1368 Q. What is it marked?

A. No. 9.

Q. What is about the size of that hole?

A. Three and a half by five.
Q. What is the depth?
A. About 8 feet, I guess.
Q. Did you take any ore out of that place?
A. I took 36 tons of ore out of there, and I sold it to Fitzgerald over at Modoc.
Q. Does that statement state about all the ore you got out of that mine and sold?
A. Yes; that is about all.
Q. As I understand you, after opening up the ore chamber in the condition it was in when Mr. Yerington visited the mine, you then commenced at the 38-foot level to sink winze No. 1 and to run drift Nos. 4 and 6. What did that work cost you, about?
A. To sink the balance of the winze?
Q. To do all this work that you did in the lower level—sink the balance of winze No. 1, make this drift No. 6 and a portion of No. 4, which you testified to. What did it all cost you?
A. I cannot say exactly.
Q. About?
A. I can say pretty near what the value of it was.
Q. What was the value of the work?
A. It cost about $12 or $13 a foot.
Q. Altogether about how much in money?
A. That is just what I did not figure on.
Q. About what distance did you run this No. 4 from the bottom of the winze—how many feet?
A. Between sixty and seventy.
1369 Q. Were you actually working at the mine immediately preceding the time Mr. Yerington purchased it?
A. I was working there.
Q. Where had you been the day before you met Mr. Yerington at Darwin?
A. I was working at the mine.
Q. When did you come from the mine to Darwin before you met Mr. Yerington at Darwin in January, 1884?
A. The day before I met Mr. Yerington in Darwin.
Q. Do you know Mr. S. D. Woods?
A. Yes, sir.
Q. Did you ever have any conversation with him about the sale of this mine?

(Objected to by complainant as irrelevant, incompetent, for the reason that it is not shown that S. D. Woods was the agent of the Southern Development Company or that he had any authority to act for it in this sale.)

A. Yes, sir.
Q. Do you know whether Mr. Woods was the agent for Mr. Yerington or the Southern Development Company at the time you had this talk with him?
A. He said he was under his employment.

(Counsel for complainant moves to strike out the answer on the ground that the declarations of the agent are not evidence of his authority.)

Q. Did Mr. Yerington ever make any statements to you
1370 about Mr. Woods acting for him in the matter of the sale of this mine?

(Objected to by complainant on the ground that the witness has shown that Mr. Yerington acted for himself, and that the contract was made for the complainant in this case by and through the agency of H. M. Yerington.)

A. Mr. Yerington told me that he would have nothing to do with Mr. Woods—that was the time Mr. Yerington examined the mine—for the reason that they had him also employed to attend to some law business, and he went up to Cerro Gordo and got drunk.

Q. Did Mr. Yerington say anything about Mr. Woods having any authority to negotiate for the sale of the mine for him preceding the time you sold it?

(Same objection by complainant; further objected to on the ground that Mr. Yerington before the sale was made told the witness that Woods was not the agent of the company or his agent, and therefore the question is leading, prompting, and urging the witness to testify to something which he has already denied.)

A. He said that Mr. Woods had been acting for him in different businesses, but he got so that they could not depend upon him—something to that effect—for the reason that he neglected his business and got drunk, and that if he bought the mine from me he advised me not to give anything to Woods in regard to this sale.

Q. No commission; is that what you mean?

A. Yes, sir.

Q. Had you seen any communication from Mr. Woods
1371 previous to the sale of the mine to Mr. Yerington; if so, what was it?

(Objected to by complainant as immaterial and irrelevant, in view of the fact that not only is there a failure to show he was the agent for this complainant, but it affirmatively appears from the witness himself that Mr. Yerington accomplished the purchase for his company through his own agency, and that Mr. Woods was not the agent of the company in this matter in any way.)

A. I saw two or three letters.

Q. Look at Exhibits "Q," "R," "S," "T," and "U." Have you ver seen those letters before?

(Objected to by complainant as immaterial, irrelevant, and incompetent.)

A. Yes, sir.

Q. Did you see them all before this sale was made?

(Objected to by complainant as irrelevant, immaterial and incompetent.)

A. Yes, sir.

Q. In these letters there is a mention of ten thousand dollars for the mine. Did you make any answer or authorize any one to make any answer to those letters?

(Counsel for complainant objects to counsel stating what is mentioned in the letter on the ground that it is not correct practice to mention what is in the letters. The letters themselves are already in evidence and show their contents; and also it is immaterial, irrelevant, and incompetent.)

1372 A. The letters were wrote to Mr. Eddy. He showed the letters to me. I requested Mr. Eddy to write back that I refused the offer.

Q. Do you know Mr. Boland and Mr. Charles Anthony, who have testified in this case?

A. Yes, sir.

Q. Did you ever receive any message from Mr. Boland through Mr. Anthony in regard to the sale of this mine? If so, state what it was.

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. I did.

Q. State all about it.

(Same objection by complainant.)

A. Mr. Anthony and Mr. McKenzie told me in Darwin that Mr. Boland told them to tell me that they had seen Mr. Yerington at Keeler, and Mr. Yerington told them if they happened to see me, or have some one come in that direction, to tell me that he was willing to pay ten thousand dollars for the mine, and if I wanted to accept it to go to Carson.

Q. Did you answer that?

(Same objection by complainant.)

A. I never answered it. I told them no, and Mr. Boland told them the same thing.

Q. Was this communicated to you before the sale of the mine and before Mr. Yerington visited the mine?

(Same objection by complainant.)

A. It was before I had seen Mr. Yerington.

1373 Q. Did any one have a bond on this mine before Mr. Yerington bought it?

A. Yes, sir.

Q. Who was it?

A. Mr. Hamilton.

Q. Was the mine closed up during the time that you were working upon it, after the discovery of the ore chamber, or not? Was it opened so that any one could go in it?

A. It was open.

Q. Had you had any offers for this mine before Mr. Yerington bought it?

(Objected to by complainant as irrelevant and immaterial.)

A. Yes, sir.

Q. Did people visit the mine often?

A. Lots of times.

Q. State, now, whether Mr. Forman and Mr. Woods, or any parties connected with the complainant in this action, ever visit the mine.

(Objected to by complainant on the ground that there is no evidence of any one having visited the mine with authority from the complainant, and that it is irrelevant, immaterial, and incompetent.)

A. Mr. Woods visited the mine twice, and also Mr. Forman.

Q. Who else visited it?

A. Mr. Yerington.

Q. I mean before Mr. Yerington's visit what parties visited that mine? You say Mr. Woods visited the mine twice?

A. Yes, sir.

Q. Who was with him when he visited the mine?

(Same objection by complainant.)

A. Mr. Forman.

1374 Q. Was it before January, 1884?

A. At one time Mr. Forman was with Mr. Yerington; at another time he was along with Mr. Woods.

Q. Take January, 1884. Before that time who did Mr. Woods visit the mine in company with?

(Same objection by complainant.)

A. Mr. Woods visited the mine with Mr. Miller, of the Elna furnace.

Q. In what year?

A. In 1883, if I remember right.

Q. Did he visit the mine again before 1884?

(Same objection by complainant.)

A. Yes, sir.

Q. Who accompanied him?

(Same objection by complainant.)

A. Mr. Bliss, his brother, and Mr. Forman.

Q. What Bliss; D. L. Bliss?

(Same objection by complainant.)

A. Yes, sir.

Q. How long did they stay there at the time of their visit when the two Blisses and Mr. Forman and Mr. Woods visited the mine?

(Same objection by complainant.)

A. About two or three hours.

Q. Did you have any conversation with them then about the sale of the mine?

(Same objection by complainant.)

A. Yes, sir.

Q. State what that conversation was.

1375 A. After they examined the mine Mr. Woods and Mr. Bliss and Mr. Forman and myself came out on the dump and we all sat down and talked about the mine. Mr. Bliss told me that he was authorized to offer me ten thousand dollars for the mine. I told him that my price was seventeen thousand dollars. He says if I wanted ten thousand dollars I could go up to Carson and get it.

(Counsel for complainant moves to strike out the answer on the ground that it is hearsay, irrelevant, and immaterial, and that it does not show that these parties were authorized to act for the complainant or that they ever declared that they were.)

Q. Did Mr. Bliss state for whom he was acting in making this offer, or by whom he was authorized to make it?

(Objected to by complainant as immaterial and irrelevant, and on the further ground that the offer was refused and the negotiations were there ended.)

A. Mr. Bliss said if he bought the mine it was for a company and one of the men was the richest man on the coast. He asked me if I knew the man; I said "No;" then he named the man—D. O. Mills

(Objected to by complainant as hearsay, because it was not shown that they were acting or pretending to act for the company in this action.)

Q. Was Mr. Yerington's name mentioned by Mr. Bliss on that visit during the time they were talking about the sale of the mine?

1376 (Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. Yes, sir.

Q. What was said, if anything, about Mr. Yerington?

(Same objection by complainant.)

A. They said they required some other kind of a mine to help that Elna furnace and make business for the railroad.

(Counsel for complainant moves to strike out the answer as hearsay and as immaterial, irrelevant, and incompetent.)

Q. Was this Mr. Bliss the same D. L. Bliss who was one of the members of the Southern Development Company of Nevada?

(Objected to by complainant on the ground it is not shown that D. L. Bliss was authorized to act for the complainant in this action.)

A. I guess he is.

(Counsel for complainant moves to strike out the answer on the ground that the witness is guessing and not stating a fact.)

Q. Now, at the time of this visit of Mr. Forman, Mr. Bliss, and Mr. Bliss' brother and Mr. Woods, what was the condition of the ore chamber so far as its being covered up with waste rock at the bottom?

(Objected to on the ground that it is irrelevant, immaterial, and incompetent.)

A. The chamber stood in the same way when Mr. Yerington bought the mine.

Q. Were you in the chamber with Mr. Forman at the time of this visit in 1883 when he was with the Blisses?

1377 (Objected to as irrelevant, immaterial, and incompetent.)

A. Yes, sir.

Q. Did Mr. Forman say anything to you at that time about the bottom of that chamber?

A. He never did.

Q. Then he examined the bottom of the chamber on that visit?

(Same objection by complainant.)

A. He examined it all over where he pleased.

Q. Did he have any tools with him?

(Same objection by complainant.)

A. He had a pick.

Q. Did he use it in that chamber?

(Same objection by complainant.)

A. He did.

Q. What did he do with it in the chamber?

(Same objection by complainant.)

A. He took the samples.

Q. Out of what part of the chamber did Mr. Forman take samples on that visit?

(Same objection by complainant, and also objected to as leading.)

A. He took a sample from every place in the chamber.

Q. Did he say anything to you about there being waste on the bottom of that chamber?

A. No; not at the time.

Q. He said nothing about that?

A. No, sir.

Q. Was there any waste on the floor of that chamber at the time? If so, state what it was.

1378 (Same objection by complainant.)

A. About the same; a little waste there, which you will always find in any place.

Q. Was it enough to cover the floor of the chamber entirely?

(Same objection by complainant.)

A. No, sir.

Q. Was there a little excavation, marked No. 14 on the model, in the chamber, at the time of Mr. Forman's visit in 1883?

(Same objections by complainant.)

A. Yes, sir.

Q. Could you see it there?

A. Yes, sir.

Q. Did Mr. Forman see it there?

(Same objection by complainant.)

A. He was in it.

Q. Did he go into it?

(Same objection by complainant.)

A. He stood in it.

Q. What did he do when he got down, if anything?

(Same objection by complainant.)

A. He looked around and took one sample from it.

Q. Are you positive that he went down in that little hole, on his visit in 1883, and took samples out of it?

(Same objection by complainant.)

A. Yes, sir.

Q. Did D. L. Bliss see that little hole on this visit in 1883?

(Same objection by complainant.)

A. He stood in it also.

1379 Q. What did he do when he got down in it besides standing in it?

(Same objection by complainant.)

A. He looked around and scratched it with a pick.

Q. Was there any ore in the neighborhood of the hole marked 14 at the time of this visit in 1883?

(Same objection by complainant.)

A. Yes, sir.

Q. Was that ore plain to be seen?

(Same objection by complainant.)

A. Yes, sir.

Q. Did Mr. Forman and Mr. Bliss see it?

(Same objection by complainant.)

A. Yes, sir.

Q. At this visit in 1883 did you and Mr. Forman discuss the amount of ore in the mine?

(Same objection by complainant, and also objected to as hearsay.)

A. They asked me what I thought about it.

(Counsel for complainant moves to strike out the answer as not being responsive to the question.)

Q. Did you tell them what you thought about it?

A. I told them that it was impossible for a man to guess what was in a mine, but I thought by having a furnace there and working the mine like most of the companies that there would be a chance to get out a thousand tons of ore, for the reason that this was low-grade ore.

1380 Q. In any of the conversations you had with Mr. Yerington and Mr. Forman did you state as a fact the amount of ore there was in the ore chamber, or merely give it as an opinion?

A. No; if I had he must have had a guarantee from me in some way. It is impossible for any man in the world to do it.

Q. Then you expressed your opinion merely, as I understand you?

(Objected to by complainant as leading.)

A. That is it.

Q. At the time of this visit in 1883 did Mr. Forman, in that ore chamber, say anything to you of this kind: "Silva, it is suspicious to see loose waste on the bottom of this stuff; what is there underneath it?"

(Objected to as leading, and the witness has answered the question before.)

A. No, sir; I was working down below. He saw it himself. He knew I had confidence in the mine, and I have got it yet.

Q. At the time of this visit in 1883 did Mr. Forman and Mr. Bliss and Mr. Woods examine the 82-foot level?

(Objected to by complainant as irrelevant, incompetent, immaterial, and leading.)

A. Yes, sir.

Q. Where were you working in the mine at that time?

A. I was running a drift.

Q. At what place?

A. The southeast drift, No. 4, on the model.

Q. Did you state to Mr. Yerington or Mr. Forman during these visits, testified to, how many tons of ore there was in sight

1381 in the ore chamber?

A. Yes, sir.

Q. Do you know Professor Price, of San Francisco?

A. Yes, sir.

Q. Did he ever visit this mine?

(Objected to by complainant as immaterial and irrelevant.)

A. Yes, sir.

Q. What time?

(Same objection by complainant.)

A. About 12 months before the sale.

Q. Did Mr. Yerington know that before he bought this mine?

(Same objection by complainant.)

A. I believe he did.

(Counsel for complainant moves to strike out the answer on the ground that the witness is giving his belief and not his knowledge.)

Q. Did you have any conversation with Mr. Yerington about Thomas Price's visit to that mine?

(Objected to by complainant as immaterial.)

A. I did.

Q. When did you have that conversation with Mr. Yerington?

(Same objection by complainant)

A. At Darwin.

Q. At the time he went to visit that mine?

(Same objection by complainant.)

A. And at Carson also.

Q. What did you and Mr. Yerington say about Professor Price's visit?

1382 (Same objection by complainant.)

A. Mr. Yerington told me that he went to the city and he went to the office of Professor Price and inquired from him to get his ideas about the property, and also inquired about the value of the ore and the samples they took from there, so he had a report from him.

Q. Did you show to Mr. Yerington, at the time of his visit to the mine, all the work which you did in that mine?

A. I showed him all the work I did there.

Q. Did you conceal from him any work which you knew was done in that mine?

A. I showed him all the work that was done in the mine that I knew of.

Q. Did you sell to this company, the complainant in this action, any other property besides this Sterling mine?

A. I sold them the Sterling mine, the south extension, and five springs.

Q. Did all of this property enter into the consideration of the sale?

(Objected to by complainant as leading.)

A. It was all one deed.

Q. I believe you were arrested some time or other about this matter?

(Objected to as immaterial and irrelevant.)

A. I was.

Q. What year and month was that?

A. In the month of May, 1884.

Q. Did you have a conversation with Mr. Yerington at the
1383 time of the first conversation you had with him after your arrest, and where was it?

A. The first time I met Mr. Yerington after my arrest I met him down at Keeler, at the end of the track.

Q. State what he said to you at the time and the circumstances under which he said it. You were in charge of the sheriff, were you not?

A. I was.

Q. What did Mr. Yerington say to you?

A. After I arrived at Keeler I went to Tom Boland's store, and Mr. Yerington requested the sheriff to take me into his office, and I went to the office and Mr. Yerington sat down on a chair, and he commenced talking to me about the sale of the mine, and he said that I had drilled some holes there and filled up holes, and that the former shaft or excavation, sunk seven or eight feet deep, was filled up; and he said he asked me very plain once or twice if I had shown all the work that was done at this point of location where this extension was made, and I told him, "Yes." He accused me of telling him a lie; that is the way I understood it. I told him that he was badly mistaken; that I never done any work there or at any other place but what I showed him. Then he said, "I tell you what I will do with you. I want that money that you have got on deposit at Wells-Fargo's, at Carson, and I will give you the mine back, and, I think, twenty-five hundred dollars is plenty; you ought to be satisfied with that." I told him I would not do nothing of the kind. "Well," he says, "You had better consider
1384 this matter over in a very short time, and if you do not come to my terms," or something that way, "I will prosecute you and send you to San Quentin for ten years." I said, "Mr. Yerington, go right ahead and paddle your canoe. There is no disgrace to send a man down there under such circumstances." He says, "If I do you will be awful sorry." I says, "I have not got nothing to be sorry —; you go on and paddle your canoe. I have nothing to say about it." Then Mr. Conklin asked me to go with him a little distance from there, that he wanted to have a talk with me; so I went with Mr. Conklin. We both sat down on a box and Mr. Conklin says, "See here, Frank, me and Mr. Reddy have known you for 16 or 18 years." I said, "Yes; I have known Mr. Reddy for a good many years." He says, "I am a friend of yours, so is Mr. Reddy." I said, "Yes; Mr. Reddy is a friend of mine." He says, "Now, I will give you my advice." I said, "What is it." He said, "You know you are in a bad fix. You obtained ten thousand dollars from the Southern Development Company, and now, if you take my advice, it would be a good thing for you; you have got twenty-five hundred dollars already, you ought to be satisfied; that is lots of money"—he repeated that once or twice—"and you had better give up that money that you have got in bank." I said, "I will not do it." "Why?" I answered, "Because I have not got any business to." He said, "Why do you not do it?" "Because I do not want to," something in that way. He said, "If you do not take my advice we are going to prosecute you, and it is a sure thing we will send you to San Quentin for ten years, and you will never get a quarter of a dollar out of the money as long as you live." I said, "I am used to running

1385 around broke," or something to that effect. We went back to the office, and Mr. Yerington got a piece of chalk, and he marked on the floor this ore chamber. He represented the ore chamber, and he was trying to show a place that he said he found the drills filled up, and I told him there was nothing of the kind; that I never did any blasting there, or any drilling, excepting what a miner did in any work in a mine. Mr. Yerington says, "I will tell you one thing and that is this: You give up that money that you have got in Carson—you have had already two thousand five hundred dollars—and I will let you alone." I says, "No, sir." "Why?" he says. I says, "Because I have not got any business to." He said, "Have you got confidence in the mine?" I says, "Yes." He says, "Then take the mine and give me the money." I says, "I will not do it." He says, "If you have confidence in it why don't you take the mine?" I says, "The reason is that a man that has got money can work a poor mine, but a poor man is not able to work a rich mine." Mr. Yerington says, "You shall go to San Quentin if you don't give up that money." I said, "Paddle your canoe; you are trying to use me like a dog; go ahead." That is the last word I had there. Afterward we started up on the train and Mr. Conklin came to me once more. He came and sat alongside of me on a flat car and he advised me to give up the money. I refused to do it; so about ten minutes before we got to Independence station Mr. Yerington came to me and he spoke a few words. I could not understand at the time what he was talking, for the reason there was too much wind. He treated me with a cigar and all hands at
1386 the time. When we arrived at Independence station, after I got off the car, Mr. Yerington came to me and says, "One word more I want to tell you. Why, in the name of God, can't we compromise this matter?" I said, "I have not got nothing to compromise with you." He says, "If you don't come to my terms I will put you in jail and I will prosecute you and send you to San Quentin for ten years, and you will never get a cent of that money in a hundred years, or as long as you live." I says, "I am satisfied." That is the last conversation I had with Mr. Yerington.

Q. On that day, or at any other time, did Mr. Yerington or any agent of this company offer you a deed of this property back—a paper deed, a written-out deed of the property?

(Objected to by complainant as incompetent.)

A. No, sir.

Q. Did Mr. Yerington, at the time of this conversation in May—at the time you were arrested—offer you any paper which purported or claimed to be a deed of this property?

(Objected to by complainant as incompetent.)

A. No, sir.

Q. Did Mr. Conklin, at the time of this visit, offer you a paper-writing purporting to be a deed of this property?

(Objected to by complainant as incompetent.)

A. No, sir.

Q. Did any one, at any time from the time you have sold this mine to the present time, ever hand to you or send to you a deed purporting to be a conveyance of this property back from this company to you?

(Objected to by complainant as incompetent.)

1387 Q. Have you ever seen a deed executed by the complainant in this action?

(Same objection by complainant.)

A. Never.

Recess until 2 p. m.

1388 *Afternoon Session.*

FRANK SILVA recalled for further examination.

Mr. MINER:

Q. Have you ever visited the mine since you quit working there for the complainant in this action?

A. The ore chamber?

Q. Yes.

A. Yes; I have been all over the mine.

Q. How many times have you visited that mine since May, 1884?

A. Three or four times.

Q. Did you find any difference at the ore chamber in these visits and the ore chamber at the time you sold the mine?

A. Yes, sir.

Q. What is the difference? State it in your own words.

A. At the time I sold the mine this winze at the bottom was about 7 feet in length and from four and a half to five feet in width. I went there since I sold the mine and I found it to be in the bottom about 20 x 18.

Q. Had any work been done on what was then called the floor or foot wall of the chamber at the time you sold the mine, after you sold the mine, — at the present time; if so, what work had been done?

A. They made an excavation from the foot of the ladder back about 10 or 12 feet, I should judge, and to the northwest side about the same; it stands now about 20 x 20.

Q. What depth had been taken off of the foot wall of the winze or ore chamber?

A. About nine feet.

1389 Q. Then, as I understand you, at the time of the sale the paper marked "15" on the model would represent about where the ladder came down?

A. Yes, sir.

Q. At an incline?

A. Yes, sir.

Q. The place where the ladder was has all been dug away, and leaves the chamber flat, as represented on the model?

A. Yes; it leaves the excavation perpendicular.

Q. From the 38-foot level straight down?

A. Yes, sir.

Q. What did the ladder rest on, if anything, where the paper marked "15" now is?

A. It rests on ore.

Q. And that had all been taken out up to your last visit?

A. Yes, sir.

Q. Look at Respondent's Exhibit "E" and state whether the work designated on that map was done by you or not; state what portion was done by you on that mine; state what work you did on that mine yourself.

A. After I bought it?

Q. Yes.

A. I did this work marked "sleeping-room tunnel," about thirty feet then into the hill from the surface.

Q. What else did you do?

A. I started the main tunnel and I tapped the ledge after I got in about 100 feet, and I run a level to the northwest side about one hundred and twenty feet, and I made a raise about half way about twenty feet; then afterwards I run one shift, working in the south drift, and at the same time I continued this tunnel right in very near four hundred feet into the hill.

Q. How far did you run this northeast cross-drift?

1390 A. I run that one hundred feet. I do not know exactly the number of feet.

Q. State what next you did.

A. When I got at this point, winze No. 1, I sunk down about 44 feet or 42 feet.

Q. Did you do all the work below the main tunnel level in that mine, except the work done by the Southern Development Company after they bought the mine?

A. All the work I did in that mine after I bought it I run that tunnel in very nearly four hundred feet and run two levels, one south and one north.

Q. Did you sink No. 1 and No. 2?

A. I sunk winze No. 1 down at 40 odd feet.

Q. Did you sink both winzes?

A. I did all that work.

Q. Did you make this incline tunnel marked "incline tunnel, 41 feet," on the map?

A. That was down 15 feet when I bought the mine.

Q. Did you carry it from there down to the cross-drift?

A. I carried it down to winze No. 1.

Q. At the point of location that work was all done when you bought the mine?

A. Yes, sir.

Q. What did you see in the ore chamber in the way of ore during your visit in June, 1886? Is there any ore now?

A. There is considerable ore there.
Q. In what place is that ore?
A. On the side and face on the 38-foot level.
Q. On which side of the chamber is it?
A. It is on the northwest side. It is from the northeast to the northwest.
1391 Q. Is there any ore in the little shaft marked "14" on the model?
A. There is a streak running across it.
Q. What is the width of the ore in that chamber near the little shaft?
A. About 10 inches.
Q. What is the width on the northeast side of the chamber?
A. There are two streaks there; the upper streak stands close to the roof. It averages from six inches to a foot and a half in some places. The other one is mixed with quartzite and lead and lime and ledge matter.
Q. What is the width of the other one?
A. It is wider than the other one. It is not quite as good ore.
Q. Does that ore extend up into the 38-foot level?
A. It goes clear up.
Q. Is there any ore in the 38-foot level?
A. Yes, sir.
Q. What part?
A. Right along.
Q. In what part of it?
A. Right along on the level—right along on the side.
Q. Does it extend higher than the bottom of the 38-foot level?
A. It extended over the roof.
Q. Is there any upraise in the 38-foot level?
A. There is a small one there about 8 feet or 10 feet.
Q. Does the ore extend up in that upraise?
A. Yes, sir.
Q. When you sold this mine to Mr. Yerington did you know or did you not know the extent of the ore which was upon the sides of the chamber or upon the bottom of the chamber?
A. No.
1392 Q. Had you done any work in any way by which you could determine the thickness or extent of the ore that was upon the sides of that chamber? How far into the earth did the ore extend?
A. My idea was to find out the value of the body of ore by running that lower level.
Q. The 82-foot level?
A. Yes, sir.
Q. You ran to find out whether the ore extended down that way?
A. Yes, sir.
Q. Do these specimens from "G to M" represent the ore that was in the mine at your last visit?
A. Yes, sir.
Q. Is there ore of that kind there?

A. Yes, sir.
Q. Look at "Exhibit G" and tell us if you recognize it.
A. That is a chunk I knocked out with a scantling.
Q. Point on the model at which point you knooked that out with a scantling and when.
A. On the northeast corner of the little excavation.
Q. At what time?
A. I cannot tell exactly; it was in 1884.
Q. At your last visit did you find any ore at that point where you took this sample from?
A. The ore stands just the same as at the time I sold the mine, a small streak running across averaging from about *to* 6 *or* 8 inches of ore and the balance of it is ledge matter—decomposed stuff.
Q. Do you know one John Wilson, a resident of Darwin?
A. Yes, sir.
Q. Do you know whether he claims to be the owner of the
1393 Stirling mine at present?

(Objected to by complainant as immaterial and irrelevant.)

A. He told me he owned the mine.

(Counsel for complainant moves to strike out the answer as hearsay.)

Q. Did you examine the records to see if he had located this mine or not?

(Objected to as irrelevant, immaterial, and incompetent.)

A. I saw the records.
Q. What steps did you take to find out if he had relocated the mine or not?

(Same objection by complainant.)

A. I asked the recorder if he had relocated the Stirling mine and he said, "Yes."

(Counsel for complainant moves to strike out the answer as incompetent.)

Q. What was his name?

(Same objection by complainant.)

A. Thompson.
Q. What district is he recorder of?

(Objected to by complainant as irrelevant, immaterial, and incompetent.)

A. New Coso district.
Q. The mining district?
A. Yes, sir.
Q. The same mining district in which the mine is located?

1394 (Same objection by complainant.)

A. Yes, sir.

Q. Look at this paper and tell me when you obtained that (handing a paper to the witness).

(Same objection by complainant.)

A. That is a certified copy that I got from the recorder.

Q. From this recorder, Thompson, of the mining district?

(Same objection by complainant.)

A. Yes, sir.

Q. Is that a copy of that location notice?

(Same objection by complainant.)

A. Yes, sir.

Mr. MINER: I offer this in evidence.

(The location notice is marked "Respondent's Exhibit W," is read in evidence, and is as follows:)

1395 "*Cuba Ledge.*

"Notice.

"I, the undersigned, do hereby relocate and claim fifteen hundred (1,500) linear feet on this ledge or lode containing gold, silver, lead, and other metals, together with three hundred (300) feet on each side of said ledge or lode, commencing at this monument built of stone and about three feet high, on which a copy of this notice is posted, at a point on the ledge situate about one hundred feet northerly from the mouth of the tunnel on the ledge, and thence running and extending in a southeasterly direction a distance of one thousand linear feet and in a northwesterly direction from the said monument and notice a distance of five hundred (500) linear feet on the said ledge or lode. This mine or ledge was formerly known as the Stirling mine, and is situate about twelve miles in a southeasterly direction from Darwin, on the west slope of the Maturango range, in the "Coso" mining district, county of Inyo and State of California, and shall now be known and called the "Cuba" ledge.

"Relocated and claimed this first day of January, A. D. 1866, at 1 min. past 12 a. m. of said day.

"JOHN WILSON, *Locator.*

"Filed for record at 10.30 o'clock p. m., January 1st, A. D. 1886.

"Recorded at 11.20 p. m., January 1st, A. D. 1886.

1396 "N. S. THOMPSON,

"*Recorder Coso Mining District.*

"I hereby certify that the above is a correct copy of notice of location of the Cuba ledge as it appears in my office, Book E, page 88.

"N. S. THOMPSON,

"*Recorder Coso Mining District.*"

Q. Did Mr. Eddy go security for you for some money at one time?

(Objected to by complainant as immaterial and irrelevant.)

A. He did.

Q. In what way?

(Same objection by complainant.)

A. He went security for me for five hundred dollars.

Q. You heard Mr. Eddy testify about that five-hundred-dollar note, have you not?

A. I did not.

Q. From whom was the money obtained—Harris & Rhine?

(Same objection by complainant.)

A. Yes, sir.

Q. Did you state you would send to Europe to get the money at the time the note became due?

(Objected to by complainant as leading.)

A. I did.

Q. State the circumstances of that—why it was that the money did not come.

(Same objection by complainant.)

A. I asked Mr. Eddy and another gentleman if they — willing to go security for me for $500 for four months. They said
1397 they would. We went and I got the $500. I told them I thought I would be able to pay them inside of four months, as I was going to send home and get the money. I wrote home, and when I got the answer back it stated that they had let me have money from home twice, one time one thousand dollars and another time five hundred dollars, and they were not going to lend me any more money without they received from me some paper to show how much money I had received from them. That was the reason.

Q. Did you explain that to Mr. Eddy?

A. Yes; he was satisfied himself. He had a little kick with me about it.

Cross-examination:

By Mr. REDDY:

Q. When did you deliver possession of the Stirling mine to Mr. Yerington or the Southern Development Company under the sale which has been in question?

A. I consider I delivered possession after I sent the deed.

Q. You went to the mine with Mr. Yerington and Mr. Coffin and a lot of men. What time was that; on the 9th of March, was it not?

A. About that time.

Q. You delivered possession of the mine on the 9th of March?

A. Yes, sir.

Q. Who had possession of it prior to that time, from the time you bought it, until that day?

A. Mr. Coffin went down there as foreman.

Q. Before the 9th of March, before Mr. Coffin or any of Mr. Yerington's men went there, who had possession of it before that time? You had it under your ownership and worked it?

1398 A. I do not remember.

Q. Do not you know whether you owned that mine or not prior to the time that Mr. Yerington bought it from you?

A. Yes.

Q. You had possession of it and worked it until you sold it and delivered it to Mr. Yerington?

A. Yes, sir.

Q. Did you deliver any tools to Mr. Yerington at the time the mine was turned over?

A. Yes, sir.

Q. What were they?

A. Wheelbarrows, drills, picks, hammers, and everything.

Q. You delivered everything over to him on the 9th of March?

A. Yes, sir.

Redirect examination by Mr. MINER:

Q. Do you remember purchasing a piece of drill from one J. S. Gorman?

(Objected to by complainant as not being in re-examination.)

A. I did.

Q. What conversation did you have with him about that drill at any time? State the size of the drill.

A. I bought more than one drill from Mr. Gorman.

Q. Did you buy more than one drill over four feet long?

A. I got a bar of steel from him seven feet long.

Q. Was that the only bar of steel of about that length you ever got from him?

A. Yes, sir.

Q. How long before the sale of the mine did you get that steel?

A. I cannot tell exactly.

Q. What conversation did you have with him about that

1399 bar of steel?

A. I went to Mr. Gorman and asked him if he had some bars of steel so that I could make one or two drills, because the drills I had were all short drills, and Mr. Gorman says they had some. I asked him how long they were. He told me from 6 to seven feet in length, that he had received from San Francisco. I went and got one bar and I took it to the blacksmith's shop. I asked Tom Boland to sharpen it for me and I took it out to the mine. After I got there I made two drills out of it, one about four feet and the other probably three feet. That was the conversation I had with Mr. Gorman.

Q. Did you say to Mr. Gorman at any time or at the time you

had this bar of steel that it was a handy thing or a good thing to have in prospecting or going ahead; did you say that to Mr. Gorman?

A. I told Mr. Gorman that my drills were too short and that once in awhile a man needs a long drill when he has a chance to put in a big shot; something to that effect.

Q. Did you use the word "prospecting" or "going ahead;" did you say that to Mr. Gorman?

A. No, sir.

Q. Then if Mr. Gorman says that you used those words he is mistaken, is he?

A. Mr. Gorman is not certain of that, because I never spoke nothing of the kind. I told Mr. Gorman I needed a drill from three to four feet long, and I changed three or four drills for that bar of steel, so every man used a drill from 3 to 4 feet long; it is no difference if he works single-handed or double-handed.

1400 Recross-examination:

By Mr. REDDY:

Q. What do you mean by ore?

A. I call ore anything that contains silver and lead.

Q. Without any reference to the particular quantity or amount?

A. When it is large amounts we consider it large amounts; when it is small it is small.

Q. It is ore all the same?

A. Yes, sir.

Q. If there is anything that there is a trace of silver or lead in it is ore?

A. That has a small piece.

Q. Anything that contains a trace of lead or silver is, in your estimation, ore?

A. As long as it contains mineral it is ore.

On page — I wish to change the first answer from "yes, sir" to "no, sir."

(Signed) FRANK SILVA.

(Testimony for respondent closed at Independence.)

1401 RICHARD CREER, a witness on behalf of complainant in rebuttal, sworn.

Mr. REDDY:

Q. What is your name, age, residence, and occupation?

A. My name is Richard Creer; age, 35; occupation, miner; residence, Candalaria, Nevada.

Q. How long have you resided in Candalaria?

A. Between nine and ten years.

Q. When did you begin mining?

A. In 1869 or 1870.

Q. Where?
A. In the Isle of Man, Europe.
Q. How many years did you mine there?
A. I mined about two years.
Q. What class of mines did you work in there?
A. Lead mines.
Q. Where did you next mine?
A. In Lancashire, England.
Q. How long did you mine there?
A. About four years.
Q. In what class of mines?
A. Iron mines.
Q. Where did you next engage in mining?
A. I was engaged in a coal mine for a little while during that time—sinking.
Q. What country next did you go to mining in?
A. In this country; Virginia City, Nevada.
Q. How long did you mine there?
A. About eight or nine years.
Q. On the Comstock?
A. Yes, sir.
Q. Where did you next mine?
A. Candalaria; in the Northern Belle.
1402 Q. How many years have you been working in the Northern Belle?
A. About nine and a half.
Q. In what capacity have you worked there?
A. I have worked three years as a miner, and ever since I have been shift boss.
Q. What have been your wages there during the last few years?
A. Five dollars a day.
Q. Do you know the Stirling mine?
A. Yes, sir.
Q. In Inyo county, California?
A. Yes, sir.
Q. Have you examined that mine?
A. I did.
Q. Why did you go there to examine it?
A. I was sent over by the Southern Development Company.
Q. You were requested to go there and examine it with a view of being a witness in this case?
A. Yes, sir.
Q. What were you doing at the time you were requested to go there?
A. I was shift boss in the Holmes.
Q. Did you quit there to go, or did you get leave of absence?
A. I got leave of absence to go.
Q. Did you go there at your own expense to examine the mine?
A. No, sir.
Q. What induced you to go?
A. I expected my expenses to be paid and my wages also.

Q. The wages you were receiving there?
A. Yes, sir.
Q. You understood that was what you were to receive?
A. Yes, sir.
Q. Have you any interest in this matter beyond that?
A. No, sir.
Q. You left five dollars a day to go?
A. Yes, sir.
1403 Q. And you return to the same situation at the same wages?
A. Yes, sir.
Q. When did you visit the Stirling mine?
A. On the afternoon of the 15th of this month, June.
Q. Who was with you?
A. Fred. Cockrill and Frank Bartlett.
Q. Mr. Creer, will you look at the map now presented to you and which is marked "Complainant's Exhibit 1," and say whether it represents to your mind the workings which you found in that Stirling mine—that which it purports to represent?
A. Yes, sir.
Q. Do you see on that map a place marked "point of location?"
A. Yes, sir.
Q. Did you visit that point in company with the gentlemen named?
A. Yes, sir.
Q. Describe what you saw there.
A. We went to the tunnel there and found a hole seven feet deep and the bottom of it was all in lime rock. There was not any ore there that I could see, and up above the hole or above the bottom of the hole came a little line, and it continued on up to the roof of the drift.
Q. State whether there were any croppings at that point.
A. I did not see any croppings at that point, only this yellow lime.
Q. State whether you saw any galena in that region.
A. No; I did not see any galena there.
Q. State whether you saw any above the floor of that cut which runs into the little shaft or hole.
1404 A. No; I did not see any galena in there.
Q. If there had been any there originally it had been removed?
A. Yes, sir.
Q. State whether the little shaft and cut there fairly prospect whatever there may have been there in the way of croppings or ore.

(Objected to by respondent as leading.)

A. It was fairly prospected. If there was anything there it would have been struck by this drift or cut.
Q. Do you recognize what is marked on the map as the Stirling tunnel and branches from it, the westerly and easterly branches?
A. Yes, sir.
Q. State if you examined carefully the easterly branch.

A. I examined this easterly branch, and found a little streak of this low-grade ore in it.

Q. State whether you examined the works from the level of the easterly branch of the Stirling tunnel up to the surface, or as far as you could go from the tunnel level upwards.

A. Yes; I did.

Q. State the nature of the vein, if there was one, exposed there.

A. There was a vein exposed there. It was apparent to me that all the best ore that was to be seen was taken out. There were little spots of galena and carbonate there, but it looked to me as if it was worked out and abandoned.

Q. Could you see any place there which would, in your judgment, pay for mining?

A. No, sir; I did not.

1405 Q. How was the ore that you saw there—how did it occur; scattered through other rock?

A. Scattered through iron.

Q. There was considerable iron rock there?

A. Yes, sir.

Q. What would you call that iron rock—the gangue?

A. The gangue of the ledge.

Q. And through the gangue of that ledge, as I understand you, you would see spots of ore here and there?

A. Yes, sir.

Q. But not in quantities that would pay for mining?

A. Not in sufficient quantities to pay for any mining.

Q. What would be the value, in a mining sense, if you know, of the ground from the easterly branch of the Stirling tunnel up to the surface; would it have any value as a mine?

A. No; not as a mine, at the present time.

Q. From there up?

A. No, sir.

Q. As it showed?

A. As it showed.

Q. State whether the works from the easterly branch of the Stirling tunnel up to the surface fairly prospected whatever there was in the way of a vein?

A. Yes, sir; it prospected very good.

Q. As a miner, you would be satisfied that whatever there was in the way of valuable deposits there had been discovered and disposed?

A. Yes; and taken out.

Q. Now, from the level of the easterly branch of the Stirling tunnel downwards did you make an examination of the works?

A. Yes, sir.

Q. Do you recognize winze No. 1?

A. Yes, sir.

1406 Q. And do you recognize winze No. 2 on the map which I have called your attention to?

A. Yes, sir.

Q. Do you recognize the 38-foot level as thereon indicated?

A. Yes, sir.
Q. And that is termed the ore chamber?
A. Yes, sir.
Q. State if you recognize the 82-foot level and the winze running down to it.
A. Yes; I do.
Q. Can you locate the upraise from the 82-foot level into the ore chamber?
A. Yes, sir.
Q. Now look at respondent's model of the mine called Exhibit F. State whether you recognize the easterly branch of the Stirling tunnel.
A. Yes, sir.
Q. State whether you recognize winze No. 1 as represented there.
A. Yes, sir.
Q. And its collection with the 38-foot level?
A. Yes, sir.
Q. Called the 39-foot level on that?
A. Yes, sir.
Q. State if you recognize what is called the ore chamber as appearing there?
A. Yes, sir.
Q. Less that paper?
A. Yes, sir.
Q. Do you recognize winze No. 1?
A. Yes, sir.
Q. Do you recognize the drift running from winze No. 1 called the 82-foot level?
A. Yes, sir.
Q. Do you recognize No. 6 as representing a drift or cross-cut?
A. Yes, sir.
Q. Here is No. 12 as a cross-cut or drift?
A. Yes, sir.
Q. Do you recognize No. 5?
A. Yes, sir.
Q. Did you examine the 38-foot level as marked here?
1407 A. Yes, sir.
Q. Did you examine the floor of that?
A. We examined the floor and examined the floor of the little winze.
Q. Called the Modoc hole?
A. Yes, sir.
Q. Now, about the 38-foot level. Is there any ore exposed in the roof of the 38-foot level?
A. I did not see anything but iron. There is nothing there more to speak of.
Q. Did you see any samples taken from that by any one?
A. We took samples from the bottom of the Modoc winze.
Q. Did you take any off the roof of the 38-foot level?
A. No, sir.
Q. You say that is apparently a ledge of iron?
A. Yes; on the roof.

Q. If that was extensive state whether you would not have seen it on the north branch of the Stirling tunnel.
A Yes, sir.
Q. Between winze No. 1 and winze No. 2?
A. Yes, sir.
Q. It is less than 38 feet down to that roof?
A. That is all.
Q. It is about 39 feet from winze No. 1 to winze No. 2?
A. Yes, sir.
Q. The iron ore that is found in the roof of the 38-foot level—is that or not to be found in winze No. 1; does it extend that far?
A. The iron extends in winze No. 1 to the 38-foot level.
Q. Above the 38-foot level does it extend up in the winze?
1408 Can it be seen in the winze above the 38-foot level?
A. Yes, sir.
Q. How far up?
A. Pretty nearly to the top.
Q. Is it as strong in winze No. 1 as in the roof of the 38-foot level?
A. Yes; pretty nearly.
Q. How is it in winze No. 2; is it to be seen there?
A. It is not to be seen on top.
Q. It does not reach that high up?
A. No; when it comes down a little way it is spotted.
Q. There is a little place called the Modoc winze or hole extending down from that 38-foot level, is there not?
A. Yes, sir.
Q. Did you examine that hole?
A. Yes, sir.
Q. How deep is it?
A. About 12 feet.
Q. About what length is it, or width?
A. Probably ten feet, perpendicular.
Q. Did you examine the bottom of that hole?
A. Yes; I did.
Q. What did you find—any waste in there?
A. There was some waste in there.
Q. Did you clear it away so as to examine the bottom to declare what was there?
A. Mr. Bartlett took the shovel and cleaned it away.
Q. State what you did afterwards, if anything.
A. Picked in the bottom, and then took a sample across the ledge.
Q. What was that rock?
A. I would call it iron; I do not know if there was anything in it or not.
Q. It was like the balance of the iron rock in the ledge?
1409 A. Yes, sir.
Q. You saw a sample taken, or took one?
A. I saw a sample; Mr. Cockrill took the sample.
Q. What did you find the bottom of that hole to be—what kind of rock?

A. It is iron clay.
Q. Any lime?
A. There was lime, but not very much lime in the ledge.
Q. Did you find the bottom of the vein in that?
A. Yes, sir.
Q. What was the bottom?
A. The bottom was iron and clay mixed.
Q. Did you make any examination at any point in the hole?
A. Yes, sir.
Q. Where?
A. On the hanging.
Q. What did you find?
A. I found a little slab of carbonate ore there.
Q. How wide or thick?
A. About three inches.
Q. What did you find behind that?
A. Iron clay.
Q. Did you find the hanging wall?
A. Yes, sir.
Q. What was the hanging wall composed of?
A. Lime.
Q. What is the formation of the country rock?
A. Lime.
Q. Lime on both sides?
A. Yes, sir.
Q. Then the vein, so far as it shows as a vein, is how wide?
A. It is different; it varies a good deal.
Q. What constitutes the vein; I mean the matter between the two walls; what is that composed of—iron?
A. Iron and lime.

Q. I should have examined you as to what is marked No. 7
1410 here on the model; that is above the tunnel, I understand. Did you examine that point?
A. Yes, sir.
Q. What did you find there?
A. I found an old stope there.
Q. Any ore?
A. There was a little low-grade ore left there, and probably there were some spots of good ore.
Q. What was the rock generally?
A. Iron.
Q. And ore scattered through it and mixed with it, as you have described in the upper works; is that the fact?
A. That is the fact.
Q. Now, we will go down to the ore chamber. State whether you went from the 38-foot level down to the ore chamber.
A. Yes, sir.
Q. What did you find there? Describe its general appearance.
A. It was a regular pocket there, a chamber, as you may term it. It looks like as if it was all worked out, or nearly so. What was

worth working was worked out, to the best of my opinion, by the looks of it.

Q. Take the northeast side of the ore chamber. What was to be seen on that side?

A. A few slabs of ore there, or ledge matter.

Q. Look at the sticks running up along the northeast side of the chamber, and state if you saw any ore in that vicinity marked by those sticks.

A. No; I did not.

Q. What did you see there—anything in the way of ledge matter?

A. I saw lime.

Q. Is there any ore or vein matter on that side of the chamber—on this side where the sticks are?

1411 A. Not where the sticks are; above the sticks there is a little ore.

Q. How does it appear?

A. It appears to be about two feet in thickness there—a slab of iron and ore, and what ledge matter there is there, and I believe it extends up to thirty-eight foot level.

Q. Is that in the shape or form of a vein or slab lying against the country rock?

A. I would call it a slab, because it is worked under and worked over it.

Q. Did you pick into it?

A. Yes, sir.

Q. Did you do sufficient work there to determine that it is not a slab?

A. I did.

Q. How on the other side of the chamber—on the northwest side. That would be opposite the point that I have spoken of. Run up and down that wall and say whether there is any vein matter or ore attached to that wall.

A. I did not see anything on this wall, only just simply slabs about six inches long, or a foot. These slabs are all worked round.

Q. What was that wall composed of?

A. Lime.

Q. What was the northeast wall composed of?

A. Lime.

Q. And the northeast end—what was that composed of, where the little shaft is?

A. This was composed of lime and carbonate.

Q. What was the floor of the chamber composed of?

A. Lime.

Q. Did you see any samples taken from that floor?

1412 A. Yes, sir.

Q. Have you seen Complainant's Rock Sample No. 1, filed yerterday?

A. Yes, sir.

Q. State whether that was a sample of the rock of which the floor of the ore chamber is composed.

A. That is what it is.

Q. Is there any vein or lode shown in the bottom of that chamber—in the floor?

A. I did not see any.

Q. Is there any?

A. No; it is lime and quartzite in the bottom of that hole.

Q. Look at the upraise marked 11 on respondent's model F and state whether you went from the ore chamber down to the 82-foot level or from the 82-foot level up to the ore chamber.

A. I went through this raise into the ore chamber.

Q. Through what sort of rock does that pass—lime?

A. It is a kind of clay.

Q. Lime and clay what?

A. Lime and clay iron.

Q. Is it solid rock?

A. No; it is not solid rock; there are some mixtures.

Q. State if you examined all the work on the 82-foot level, as represented by respondent's model, Exhibit F.

A. Yes, sir.

Q. You examined all that work?

A. Yes, sir.

Q. State whether the two winzes, No. 1 and No. 2, the 38-foot level, the ore chamber, and the works on the 82-foot level prospect
1413 that ground so as to determine whether there is or not a ledge extending down to the 82-foot level.

A. It is prospected very thoroughly, I think.

Q. Is there not a ledge or a vein of ore exposed on the 82-foot level?

A. Yes; there is a lode or vein, whatever you may call it, right here.

Q. Right there?

A. Right on the 82-foot level, marked 4, from 4 to this point here.

Q. What do you say that rock is?

A. Iron.

Q. Did you bring a sample from it?

A. Yes, sir.

Q. Is there anything to be seen in the way of a vein or lode at any other point on the 82-foot level?

A. I do not see anything. There is a little seam here, right on the end of that.

Q. Marked 6?

A. Yes, sir.

Q. State the ore to be seen in the ore chamber extending down to the 82-foot level.

A. I could not trace it down.

Q. Does or does not the work on the eighty-two-foot level in the winze and what is done in the ore chamber show whether the vein does extend or not?

A. It is pretty thoroughly prospected on the 82-foot level; I do not see there is any show for it.

Q. From the examination which you made of the Stirling mine, state whether the mine is of any value or not as a mine.

A. I do not think it is.

1414 Cross-examination:

Mr. MINER:

Q. How long were you in the mine during your visit?
A. Pretty nearly twenty-four hours.
Q. What time did you get there on that day?
A. About three o'clock—somewhere about three o'clock.
Q. Three o'clock in the afternoon?
A. Yes, sir.
Q. You remained there until what time?
A. Until the evening of the 17th.
Q You arrived there on the afternoon of the 15th?
A. Yes, sir.
Q. And left on the evening of the 17th?
A. Yes, sir.
Q. You stayed there a whole day?
A. I stayed there two days.
Q. Were you in the mine most of the time you were there?
A. Yes; we went into the mine as soon as we got there and changed, and I went there and stayed until after ten o'clock; I think it was ten o'clock when we came out.
Q. What work did you do?
A. We went pretty near all through and examined the mine slightly, so that we could determine next day where to examine and that we would know the ground better.
Q. Who directed you to go there to make that examination?
A. Mr. Reddy gave us instructions to go there; we knew that we were to go there before that.
Q. Who was it that first asked you to go there; who first brought it to your attention?
A. Mr. Cross, the superintendent for the Holmes.
1415 Q. Did he tell you about this lawsuit?
A. No; he did not say anything about a lawsuit.
Q. Did he say who he wanted you to go there for?
A. For the Southern Development Company. I do not know that he said anything about a lawsuit.
Q. Are they interested in this mine that you are working in?
A. Not that I know of.
Q. When did you next hear about going in the mine after Mr. Cross spoke to you about it?
A. From Mr. Reddy.
Q. That was a few days before your visit?
A. Yes; the day before.
Q. Did you understand for what purpose you were to visit the mine?
A. Yes; after I saw Mr. Reddy I understood it thoroughly.
Q. Were the circumstances of this case stated to you in any way?
A. No, sir.
Q. Nothing said to you about the case?
A. Nothing said whatever.

Q. Did you not know there was a lawsuit pending in regard to this matter?

A. I knew we were going there to examine the mine, and that I was going to be a witness in the case, of course.

Q. You were to examine the mine to see if there was any ore in it?

A. Yes, sir.

Q. And if there was any ore to see what kind of ore it was; was not that it?

A. They did not tell us what kind of ore, or anything about it.

1416 Q. You have no particular interest in this case?

A. Not a particle.

Q. Did you find any ore in the mine, outside of the placers you testified, where you made an examination?

(Objected to by complainant on the ground that the question is not in cross-examination.)

A. Yes, sir.

Q. At what points?

A. I found a little ore in tunnels A, B, and C.

Q. Were not those tunnels run in on croppings? Were there not croppings all around the mouth?

A. I have seen some little iron croppings, but they did not seem to amount to anything.

Q. Do not the croppings commence at this point of location and extend in a northwesterly direction a distance of three or four hundred feet?

A. Not the iron croppings.

Q. What kind of croppings stick up there?

A. Lime.

Q. Have you analyzed any of this ore or had an assay made of it, so that you know what it is?

A. No, sir.

Q. You are judging it is iron by the looks of it, principally?

A. Yes, sir.

Q. Because it is reddish looking? Is not that the main reason?

A. Yes; it looks like iron ore.

Q. You will not swear but what it has a got a great deal of silver and lead?

A. In a portion there is; in some places through the mine there is some silver and lead.

1417 Q. First-class ore—carbonate ore?

A. There might be spots of pretty good ore.

Q. You have no interest in this case at all?

A. No, sir.

Q. You want to be perfectly fair to both sides in this case?

A. Yes, sir.

Q. As an impartial judge?

A. Yes; that is what I am here for.

Q. You are not to be paid anything more than your expenses for testifying?

A. No; not that I am aware of.

Q. Will you testify just as fairly and squarely in this case as if we were paying one-half of your expenses?

(Objected to by complainant on the ground that the court will determine whether the witness is testifying impartially or not. It is not for the witness to determine that question.)

A. I will do exactly what I would do for you or any one else.

Q. Look at respondent's Exhibit G and tell me what kind of ore that is.

A. This is carbonate ore; carbonate and lead.

Q. Feel the siftings in a piece of paper which is lying under the sample and tell me what that is.

A. That is carbonate.

Q. Was there not a deposit of just this kind of ore, just such as this sample is, right here in the northeast corner of this chamber, commencing by the side of this little shaft marked 14 on the model?

A. No, sir.

1418 Q. Between this little shaft and this side of the chamber?

A. No; there was no ore like that there.

Q. None like that there?

A. None that I seen.

Q. Did you examine the northeast side of this little shaft here—right on this side of it?

A. Yes, sir.

Q. Did you not see some ore there of this character?

A. Very little of it, if there was.

Q. Was there any ore of that kind there?

A. No; there was not.

Q. Not a particle?

A. Not a particle that I could see. There might have been a particle.

Q. What prevented you from seeing it, if anything?

A. I could not say.

Q. You do not remember ever looking at that spot to see?

A. Yes, sir.

Q. Do you remember looking at this corner?

A. Yes; I looked at every corner.

Q. Were there not boards laid on the top of this little shaft?

A. There was a stick there of timber.

Q. Were there not quite a number of boards and poles and timbers lying right here in this end of the chamber—in the southeast end?

A. I think there were two or three.

Q. Were not these boards at least six or seven inches wide, so that they would cover up quite a portion of the chamber?

A. We moved one or two.

Q. Where did you put them when you moved them?

A. I threw them against the wall.

1419 Q. Does not the ore run up this northeast side of the chamber right up into the 38-foot level, and is there not quite an excavation up there, to the northeast side of this chamber and just under the 38-foot level, showing ore?

A. Where I saw the ore it commences about there (pointing).

Q. What did it measure?

A. It run up about two feet.

Q. Was it ore of this character, such as Exhibit G is?

A. There were a few little lumps of that kind.

Q. The ore that was in the chamber, then, be it small or large body, was ore of this kind?

A. Yes; but not as good as that, as a rule. It occurred in little spots through the vein of the size of this lump, or it may be a little larger, but not very much larger. You could not get a much larger piece out as good as that.

Q. Was not this ore flush with the face of the ore chamber—the ore streak?

A. Flush with the wall?

Q. Yes, sir.

A. The wall was under it.

Q. The face of it, as you stand with your face to the northeast looking at the wall, did the ore project out from the sides or go into the wall?

A. Projected out from the sides.

Q. How far did it project out?

A. About two feet.

Q. Out from the surrounding rock?

A. Out from the rock. The ore was taken from under it and here was the slab above it.

Q. Was not the whole surface of that part of the chamber as smooth as rock of that kind could be after it was picked
1420 down?

A. On the wall.

Q. Did the ore stick out of the side of the chamber as those sticks stick out of the piece of paper on which they are fastened, or was the ore flush with it, like this pencil mark on a piece of paper?

A. The ore that was above this chamber, or the upper part, was just like that stick.

Q. Stuck out?

A. Stuck out.

Q. Do you know how far into the side of that chamber that ore body or deposit extended?

A. I know how far the bottom of it went in.

Q. What do you call the bottom of it?

A. The bottom of the ore.

Q. Why do you know that?

A. Because I have seen the wall.

Q. What do you call the wall?

A. I call the wall the lime rock.

Q. Underneath the ore body?

A. Yes, sir.

Q. Do you know how far to the northeast the ore body went into the side of that chamber?

A. I did not dig it out.

Q. Does any mortal man know that?

A. It looks to me, as a miner, that it goes down no further.

Q. I again ask you, does any mortal man know the extent of that deposit on the northeast side of that chamber—how far it extends in, if it does go in?

(Objected to by complainant on the ground that the wit-
1421 ness has just answered the question and, further, that he is not to answer for "any mortal man," but to give his own judgment.)

A. I do not know if any mortal man would know it exactly, but as a miner I would not think it would extend up or down any further.

Q. That is your opinion, simply?

A Yes, sir.

Q. How long have you worked in mines of this character?

A. I have worked quite a long time in mines of pretty near the same character.

Q. Did you ever work in lead mines where the country rock is white lime?

A. Yes, sir.

Q. Where?

A. I worked in lead mines in the Isle of Man.

Q. How long ago?

A. About sixteen years ago.

Q. And was the kind of rock of the same character as the kind of rock in this same mine?

A. Not exactly of the same character; no.

Q. Was the ore of the same kind?

A. No; it was more lead.

Q. Do you remember sixteen years ago how that lead mine looked?

A. Yes, sir.

Q. Did it run in pockets, or chimneys, or how?

A. It run in a regular vein, as far as I seen.

Q. With good walls?

A. Pretty good walls.

Q. Do lead mines of this character generally have well-defined walls and good, solid, regular veins?

A. Not in a broken up country like this.

Q. Is this your first experience that you ever had in the New Coso mining district?

A. Yes, sir.

1422 Q. You have never been in a lead mine in this county before?

A. Not in this county.

Q. Have you ever been in lead mines in California before?

A. No, sir.

Q. Do you not know that in mines of this character the ore runs in pockets, chimneys, and in kidneys?

A. Yes; it is possible it might do so.

Q. Do you not know it is customary and a general thing that if a person finds a little streak of this kind of ore or iron stain that they consider it a good indication to follow it on—that it may widen out into a pocket?

A. Of course, you will follow indications in following anything.

Q. Now, then, assuming that this ore streak of two feet in width that you saw in the northeast side of the chamber was the top of the ledge, would it or not be a good prospect to sink upon?

A. You would not have enough to sink upon. That is the trouble.

Q. Could you not work in upon that at all and follow it?

A. I do not see any possible show to work in on that.

Q. Why?

A. Because it is too small.

Q. Could you not do it, though?

A. It could be done. All the ground could be taken out.

Q. In working it what direction would you go to start in and commence working on it?

A. I would start in at the bottom of it and work it right up to the 38-foot level.

1423 Q. In what direction from the face of the chamber that way, if it extended northeast of the chamber, would it go—in a northeasterly direction from the chamber standing with your face to this wall?

A. Yes, sir.

Q. It would go in a northeasterly direction?

A. Yes, sir.

Q. Is there any work in a northeasterly direction from that side of the chamber which explores that territory back of this side of the chamber?

A. How far would that come from here that explores part of the ledge?

Q. The 38-foot level.

A. Yes; and 12 feet below it, and this ore is not over 12 feet vertical.

Q. Then you have the course of this vein from the 38-foot level down to the bottom of the ore chamber, have you not?

A. Yes, sir.

Q. You have that length of vein so that you could judge the dip of it?

A. I do not know whether it has got any dip or not.

Q. Did you have any opinion on the subject?

A. It dips every way.

Q. It is an irregular formation?

A. It is an irregular ledge; that is what it is.

Q. Commencing at this little shaft at this corner of the chamber, what is the distance from there to the further point to the north in

the 38-foot level that you traced that ore body or ore deposit; what would be the distance?

1424 A. It would be about thirty or thirty-five feet.

Q. To winze No. 2?

A. This end of the chamber is not that distant; it is all worked up through here; the slab of ground that we are speaking of is right back of this ladder.

Q. On the northeast side of the chamber?

A. Yes, sir.

Q. You have it thirty feet along this 38-foot level to the side of the chamber. What is the distance from that side of the chamber where you have designated the point as being thirty feet to the southeast corner?

A. That paper is in that model and it is pretty hard to see through it.

Q. It merely illustrates something coming down there?

A. It is near where that ore is that I am speaking of.

Q. That would be the northwest end?

A. Here is the end.

Q. Now, from this end here clear up to here what would be the distance and the course of that body that you could follow?

A. It worked from here; there is no ore here that I see down on this side.

Q. On the northeast side of the chamber?

A. No ore whatever right on that part where that ledge is; it is ledge matter; it runs up on this side and runs up like that.

Q. Like the sticks on the northeast side?

A. Yes, sir.

Q. From this point clear up to here what distance can you trace that streak of deposit?

1425 A. It is the full length; if I had a rule I could measure.

Q. Give us an idea; thirty or forty feet?

A. About forty feet.

Q. Could you not determine, having that much of this body exposed or deposit of ore—could you judge from that about the pitch of it?

A. No; I could not say that is has got any pitch.

Q. This end of the chamber is considerably lower than the end up in the 38-foot level?

A. Yes, sir.

Q. You have a distance along its course of thirty or forty feet; can you not determine from what you saw of it its dip?

A. It is so irregular that I cannot say what dip it has; the dip of the winze is about the way I should judge the dip of that chamber.

Q. Winze No. 2?

A. Yes; and winze No. 1 has got the true dip.

Q. Does not the Modoc hole, marked 9 on the model, go down as a sort of incline winze on this ore?

A. Yes, sir.

Q. Does it not go down to the northeast or southeast?

A. It goes to the south a little.

Q. Then does not that show you that this ore body, if it has any dip at all, dips to the northeast?

A. It is possible it might; but then at the bottom of that winze it is wider on one wall than on the other; it is going across the winze.

1426 Q. Did you look at it to ascertain its dip at all; did you think of that?

A. Yes, sir.

Q. You could not tell how it dips?

A. No, sir.

Q. And it is very hard for a man to tell how that dip is; is not that so?

A. Yes; it is pretty hard to tell how that ore body dips. One portion of it dips north and another portion south.

Q. If a drift was started on the northeast side of this chamber and run northeast would it not explore ground which has never yet been explored in that mine?

A. Yes, sir.

Q. Would it not be apt to follow the dip of this ore body if that drift was run in?

A. If it did, but it has no appearance of going in.

Q. At the last point you can see it; at the lowest point below the 38-foot level is the Modoc hole?

A. Yes, sir.

Q. Does it not appear to be going in a northeasterly direction at that point?

A. No; it dips more to the south.

Q. Down southeast?

A. It dips more like that.

Q. That is, southeast?

A. Yes, sir; if it is dipping any way it dips that way. It is pretty uncertain how it does dip.

Q. Now, if it dipped to the northeast at an angle of thirty degrees would not that angle, if it continued out, carry it beyond the 82-foot level and leave all these workings here on the lower level to the southwest of the ledge?

A. I should not think it would.

1427 Q. As a mining man do not you know that if this is the 55-foot level and this is the 82-foot level, in that distance, at an angle of thirty degrees, starting here at the Modoc hole or at the ore chamber, would it not carry it beyond the 82-foot level and northeast of it?

A. No; I do not think it would carry it beyond.

Q. What angle would it have to have in order for it to go beyond the 82-foot level?

A. I could not say exactly what angle.

Q. You do not know, then?

A. No; not exactly. It would have to go very flat to carry it out to that.

Q. Do you know anything about degrees and angles?

A. I do not know very much.

Q. Do you know how many degrees there are in a circle?
A. Yes, sir.
Q. How many?
A. Three hundred and sixty.
Q. Do you know what a half pitch is?
A. Forty-five.
Q. Would a half pitch carry that, commencing at the ore chamber, beyond the 82-foot level?
A. I do not think it would.
Q. It would have to be at a less angle than that?
A. Yes; I think it would. From here is pretty near half pitch.
Q. Now, I want you to look at these other samples and tell me what kind of ore they are. Look at Exhibit H. What is that?
A. It is carbonate.
Q. Look at I. What is that?
A. That is a piece of galena and iron.
1428 Q. Is not the ore of the kind shown you in these samples on the northeast side of this chamber?
A. Some of it; yes.
Q. Look at Exhibit J and tell me what kind of rock that is.
A. That is carbonate and lead or carbonate and galena, I should say.
Q. Is there not a deposit of that fifteen to twenty inches wide right in the end of this chamber and sticking up on the northeast side of this little shaft, plainly to be seen?
A. No, sir.
Q. Did you dig around this little shaft, around its mouth?
A. I dug around its mouth and in the bottom.
Q. Did you come up this upraise marked 11?
A. Yes, sir.
Q. Now, as you entered this little room did you notice on the right of it as you entered a chunk of ore standing on that side?
A. No; I did not notice that chunk of ore.
Q. Did you pick around in this corner?
A. Yes; I picked around there.
Q. Suppose a person should swear that this Exhibit J and Exhibit G both came off of that place, and that there is now a deposit of twenty inches or more, would you say they were testifying wrong or what?

(Objected to by complainant on the ground that the question is compound. The witness has not undertaken to tell what has been taken from there. He has only answered what appears there now.)

A. If they saw it there it was taken out between the time they were there and the time I was there.
1429 Q. Then you do not know but what somebody went to work in that chamber immediately before your visit and took the ore out in places there?
A. I do not know anything about it.
Q. Did you have any talk with Mr. John Wilson?

A. I talked to him, but not in regard to the working of the mine and who worked there.

(Counsel for complainant objects to anything John Wilson stated to the witness as irrelevant and hearsay.)

Q. Did he ever tell you whether he had taken any ore out of this chamber or not?

(Same objection by complainant.)

A. He did not tell me anything of the kind.

Q. Who took you to the mine when you went out there?

A. There was a team went out with us. I do not know the man's name.

Q. Was any one out at the mine?

A. No, sir.

Q. Any tools out there?

A. We took tools with us.

Q. There were none at the mine?

A. I only saw a small shovel.

Q. Who had charge of the mine?

A. I do not know.

Q. Was it unoccupied when you got there?

A. As far as I could see.

Q. Who showed you the mine?

A. Mr. Wilson showed us the mine. He went out on horseback.

Q. Look at Exhibit L. What is that?

1430 A. It is carbonate and galena.

Q. Has that the appearance of being good-looking ore?

A. It is just as good as there is there. I did not see any better.

Q. Did you look up in the upraise from winze No. 1?

A. Yes, sir.

Q. Did you go up there?

A. I did.

Q. Did you not see ore of that kind up in that upraise?

A. I believe I did.

Q. Right on the hanging wall of that upraise?

A. Not on the hanging wall, I did not.

Q. Do you know where I mean—at this point marked 7 on the model, on this place that stands up this way?

A. Yes; I know where you mean.

Q. What would be called the hanging wall; was not the ore right in the roof?

A. The hanging wall is the upper wall; there were little spots on the sides of the stopes which just resembled this a good deal, or ore like it.

Q. And was not there ore of this very same kind right up here in the northeast side of this chamber, on a little bench?

A. There was ore there in spots just similar to this and similar to that.

Q. Did you see any iron in these samples that you have examined?

A. Yes; there is iron in them.
Q. How do you know there is iron there?
A. From the stain.
1431 Q. Show me some iron in sample L.
A. All these places are stained with iron.
Q. That red?
A. Yes, sir.
Q. That is an iron stain?
A. Yes, sir.
Q. Is an iron stain iron ore?
A. No, sir.
Q. You would call this carbonate ore with an iron stain?
A. Yes, sir.
Q. Is not the bulk of the ore in that mine carbonate ore with an iron stain?
A. What ore there is there is with an iron stain.
Q. But the bulk of the ore is not iron ore with a lead deposit in it?
A. No, sir.
Q. I understood you to say on direct examination that the bulk of the ore was iron ore?
A. Yes, sir.
Q. Is not the bulk of this sample galena and carbonate ore?
A. Yes, sir; but the bulk of the ledge is not.
Q. Did you or not bring any iron ore where most of it was iron?
A. Yes, sir.
Q. Where is it?
A. We took some.
Q. Then there are samples of the ore from this mine which you have seen and the bulk of the samples were iron?
A. The bulk of the ledge.
Q. How do you know whether that was so without assaying it; can you tell by looking at ore which element in it predominates?
A. I can tell principally by a lump like this—the weight of it.
1432 Q. Can you, by looking into a mine or ledge as you go through, determine which element in the rock predominates?
A. Yes, sir.
Q. Lead, silver, or iron?
A. Yes, sir.
Q. What predominates in this Stirling mine—lead, silver, or iron?
A. Iron predominates.
Q. Did you measure any of those ore deposits that you saw in that mine?
A. Yes; we had a tape line.
Q. Where did you measure any of them?
A. I measured the length of this place here, which shows iron.
Q. On the 82-foot level?
A. Yes; and we measured the breadth of the ore streak in the ore chamber.
Q. What was the breadth or width of it?

A. About two feet.

Q. Of what was that streak of ore composed?

A. It was iron, carbonate, and lead, and I believe some lime mixed with it.

Q. You do not know whether it is valuable or not?

A. No; by the looks of it I do not think it was very valuable.

Q. Do you know whether it contained silver?

A. I think so.

Q. You do not know how much ore?

A. No, sir.

Q. Are those the only two places that you measured the ore deposits in the mine?

1433 A. In some places the ledge is bigger than in others.

Q. What was the biggest width that you saw on that vein?

A. Of the vein?

Q. Yes, sir.

A. About four feet.

Q. Whereabouts did you see that four feet?

A. I seen it in two or three places in No. 1 winze, near the 38-foot level. There is an iron vein there about four feet.

Q. Did you examine that and measure any of these deposits with a view of estimating about the number of tons of ore that there is in that mine of all kinds?

A. No; I did not.

Q. When I speak of ore I mean ore in its general sense, irrespective of whether it is valuable or not valuable. Have you an idea, now, what amount of tons of ore there is in that mine to-day?

A. No; I could not say; not of that kind.

Q. When you say that these are slabs of ore you mean that they appear to be slabs to you?

A. Yes, sir.

Q. As a fact, what you call slabs might be veins—ledges extending indefinitely into the ground beyond your sight. Might not that be the case?

A. A slab is different to a vein.

Q. But these things that you call slabs might, in fact, not be slabs—might be ledges extending indefinitely into the ground; might not that be the case?

A. If they extended indefinitely into the ground they would be ledges.

1434 Q. You do not know of your own knowledge whether they are slabs or ledges extending indefinitely into the ground?

A. As a miner, I do not think they would extend into the ground.

Q. Do you know it, that is what I am asking you?

A. I do not know it.

Q. Suppose you would commence working on this face—on this slab—you might still be working on it now trying to cut it out?

A. I do not know what kind of an answer to give to that question. It is cut under and cut over, and it is not very reasonable for a vein to go in there. It is not very reasonable for a miner to think

that a slab would work into a vein in that way when it is cut under and when it is cut over.

Q. How far in is it cut under and over?

A. It is cut into the lime rock.

Q. How far?

A. The slab of ore is two feet, taken in the bottom of it.

(Signed) RICHARD CREER.

(A recess was here taken to Thursday, June 24th, 1886, at 9.30 a. m.)

1435 THURSDAY, *June 24th*, 1886.

(Counsel and parties met pursuant to adjournment.)

FRANK BARTLETT, a witness on behalf of the respondent (?), sworn.

Mr. REDDY:

Q. State your name, age, place of residence, and occupation.

A. Age, 37; residence, Candalaria; occupation, miner.

Q. How long have you been engaged in mining?

A. In the neighborhood of twenty years.

Q. You began when a boy?

A. I began between 17 and 18—thereabouts.

Q. Where did you begin mining?

A. On the borders—Devonshire and Cornwall—in a mine called the Drake Wall.

Q. How long did you mine in Europe?

A. Until '76 or '77.

Q. How many years altogether?

A. Between 10 and 11.

Q. In that district that you have just named?

A. Not entirely in that district. I worked in different districts.

Q. State whether you ever worked in any lead mines in the old country.

A. Yes, sir.

Q. How long?

A. This Drake Wall mine is a mine composed of three ledges—lead, copper, and tin. I worked in that mine upwards of seven years.

Q. When did you come to the United States?

1435½ A. I think I came to the United States in the summer of 1886–'7.

Q. Have you followed mining as business since you have been in the United States?

A. Yes, sir.

Q. Where did you mine in the United States?

A. I have mined principally in Nevada and Colorado.

Q. Have you worked in any lead mines since you have been in the United States?

A. Yes, sir.

Q. Do you know the Stirling mine in New Coso mining district, Inyo county, California?
A. Yes, sir.
Q. Did you ever visit that mine?
A. Yes, sir.
Q. Did you examine it?
A. Yes, sir.
Q. What caused you to examine it?
A. By being sent there for that purpose, engaged to examine it.
Q. From what point did you leave to go there?
A. From Candalaria.
Q. Were you engaged at work at that time?
A. No, sir.
Q. In any business?
A. No, sir.
Q. What induced you to go from Candalaria to the Stirling mine to examine it?
A. By my engagement.
Q. What engagement did you have?
A. An offer of pay, for the purpose of examining it.
Q. What pay do you get, if any?
A. $4.00 and expenses, according to agreement.
Q. When did you make the examination of the Stirling mine?
A. I started to examine the Stirling mine on the afternoon or the evening of the 15th of the present month.
Q. Who was with you?
1436 A. Mr. Fred. Corkhill and Mr. R. Greer.
Q. Did you begin your examination on that day?
A. Yes, sir.
Q. When did you complete it? You got there on the afternoon of the 15th.
A. I think we completed it on the afternoon of the 17th.
Q. How much time did you spend in and upon the mine altogether in examining it?
A. The first day, I think, we entered the mine probably about half past four and returned again about 10 o'clock. The second day we started about 8 and kept going that day until about noon. We came and took dinner, which took us probably three-quarters of an hour. We returned to the mine again, and I think it was between 6 and 7 o'clock on quitting on that day.
Q. Did that complete the examination?
A. No.
Q. Go on.
A. On the following morning we made a further examination, and we continued until after midday.
Q. Then you continued your examination through part of three days—one whole day and part of two days?
A. Yes, sir.
Q. You made a pretty thorough examination of the mine and premises, did you?
A. Yes, sir.

Q. Look at Complainant's Exhibit No. 1 and state whether that fairly represents the Stirling mine which you examined?

A. Yes, sir.

Q. Do you see on that map a placed marked point of location?

A. Yes, sir.

Q. State if you visited that point.

A. I did.

Q. Be kind enough to describe what you saw there.

1437 A. I found a hole or a small shaft sunk to the depth of about seven feet; in that hole I found no mineral of any importance, the bottom consisting of hard lime; on top of said hole I found a bunch of iron not traceable—that is, I mean not traceable with the lead on top.

Q. Did you examine the ground immediately surrounding the shaft and cut at the point of location?

A. Yes, sir.

Q. State whether the cut and shaft worked there at that point fairly prospected any evidences of mineral at that place?

A. Yes, sir.

Q. Now, look at the map, Complainant's Exhibit No. 1, and see if you recognize there the Stirling tunnel.

A. Yes, sir.

Q. And the westerly and easterly branches?

A. The westerly branch and the easterly branch.

Q. Did you follow the easterly branch to its end?

A. Yes, sir.

Q. Did you find any works from there down?

A. Yes; not at the end.

Q. From that level?

A. Yes, sir.

Q. Did you see a place designated as winze No. 1 and winze No. 2?

A. Yes, sir.

Q. And the works below and connected with those winzes?

A. Yes, sir.

Q. Now, did you examine the ground from the tunnel level, easterly branch, up to the surface, or as far as any works may have extended from that level upwards?

A. I did.

Q. Could you reach the surface from that tunnel level?

A. I could not.

1438 Q. Did you examine all of the openings between that tunnel level and the surface of the mine from the outside and inside?

A. Yes, sir.

Q. What is the country rock exposed in those works? I speak now of what appears above the tunnel level.

A. Lime, principally.

Q. What is the foot wall?

A. Lime.

Q. What is the hanging wall?

A. Lime.
Q. What constitutes the vein which lies between?
A. Chiefly iron.
Q. State whether or not there was any ore associated with that iron rock?
A. Ore in some quantity at different points.
Q. What do you call that iron in the vein—is that the gangue?
A. Yes; I should call it so.
Q. The ore, then, is in small quantities, mixed with the gangue. Describe in your own way how the ore appears in those works; any ore that you saw or that exists there?
A. It exists in irregular quantities, varying all the way from probably an inch to six inches.
Q. Is it in the form of a stratum, or in bunches?
A. In bunches.
Q. Irregularly scattered?
A. Irregularly scattered.
Q. What was the appearance of the works there from the tunnel to the surface; had there been mining carried on there—stoping?
A. Yes; in certain places.
Q. State what the appearance was; whether it had been mined as far as ore could be found worth stating?
1439 A. Yes; it had, according to present view.
Q. You have been in a great many stopes, have you not, and sections of mines that have been stoped out and worked out?
A. I have, sir.
Q. And vein matter and gangue left?
A. Yes, sir.
Q. How did that place compare with worked-out chambers and sections of mines that you have visited in your time?
A. It compared thoroughly well with worked-out mines.
Q. State whether the ground between the tunnel level and the surface was worked out, in a mining sense, so far as ore is concerned.
A. It was where work had been done.
Q. What quantity of what you would call ore could you see in the works from the tunnel level up, speaking now in a practical sense? Could you see any quantity of ore that could be mined out of that in a reasonable manner and at a reasonable expense?
A. I could not.
Q. It was what you would call worked out ground?
A. Yes, sir.
Q. Did you examine the works below the tunnel level?
A. I did, sir.
Q. Look at respondent's model, Exhibit F, and state whether you examined the 39-foot level?
A. I did.
Q. What did you find on that level, if anything, in the shape of ore?
A. On the 38-foot level, in places, I found spots of low-grade ore.

1440 Q. In what shape did it occur; in the shape to be mined in a practical, reasonable way, and at a reasonable cost, or was it so scattered and mixed with iron rock as to make it not a fair mining proposition?

A. It is by no means a fair mining proposition, in my estimation—that is, on the 38-foot level.

Q. How did the ore occur there, mixed with the iron, as you have described?

A. Mixed with the iron.

Q. State what the size of the vein was there, including the iron?

A. Vein matter varies from probably—I can venture to go as low as an inch to two feet, in places, in deposits or pockets.

Q. Mixed with the iron?

A. Intermixed with iron; iron chiefly or principally.

Q. Where did you see that; in the roof or the floor of the 38-foot level?

A. In the roof.

Q. How high did that ore extend, if you know, or can you give a limit to the point to which it extended or beyond which it did not extend? For instance, did it extend above the tunnel level, in quantity?

A. It might do so, but I could not see above the tunnel level?

Q. Could it be seen in the tunnel level?

A. It could not be seen on the top of the tunnel level, only in places, irregular and badly formed.

Q. In winze No. 1, did it appear there?

A. No, sir.

Q. Did it appear in winze No. 2?

A. In places; spots.

1441 Q. State whether you descended from the 38-foot level down to what is called the ore chamber, and if you recognize the ore chamber as represented by respondent's model?

A. I did.

Q. What did you find in that chamber?

A. I found ore in places.

Q. In what shape did it occur?

A. In an irregular shape.

Q. Describe where it was found—on the walls or in the bottom, or where?

A. On the hanging wall, going north and west, principally?

Q. Look at the respondent's model and look at the sticks that appear there on the northeast side of the chamber and state if that was about the position in which you found any ore in that chamber on the northeast side?

A. I found no ore on the northeast side.

Q. Did you find any vein matter?

A. Scarcely any. I believe none, directly east, adjoining the hole.

Q. State where you found any, if you did find any. Describe it.

A. I found ore going along; this ore here.

Q. Well, what wall is that?

A. The hanging wall.

Q. Is that the northeast?

A. That is the northwest, going this way. I found ore on the hanging-wall side, the north side. That chamber probably extends in length fifteen feet. I could not give any accurate account with regard to length, and the ore that is showing is possibly showing two-thirds of that distance on the hanging-wall side, going in a northerly direction or northeasterly direction—that is, going in an opposite direction to this wall.

1442 Q. Now, how did the ore that you speak of occur? You say there is about two-thirds of this distance that ore is to be seen. How did it occur, a continuous streak of ore or intermixed with other matter?

A. Intermixed with other matter, such as lime and iron, and, in a sense, it is not regular, but bunchy spots.

Q. On the opposite side of the chamber did you notice any ore which would be the northwest side?

A. No, sir.

Q. Did you examine the northeast side or foot-wall side, being the side opposite to the one you have described? And, if you did, state whether you found any ore or vein matter there.

A. I did not find any ore.

Q. What did you find there in the shape of vein matter, if anything?

A. Lime; and in regard to vein matter there were a few spots, intersecting lime of iron.

Q. What was the length of that chamber, as near as you can judge?

A. As near as I can judge, fifteen feet. It might be a foot or two more.

Q. About how wide?

A. About 6 or 7 feet in width.

Q. And how high from the floor to the roof of that chamber?

A. I think it varies in height. It might average probably six or seven feet.

Q. It is properly called a chamber, according to your ideas?

A. Yes, sir.

Q. It represents a chamber wherein ore had been deposited?

A. Yes, sir.

Q. And had been excavated?

A. Yes, sir.

1443 Q. And a portion of the vein matter or the ore had been left on the side of the wall, had it not?

A. Yes, sir.

Q. That was the appearance that it bore?

A. Yes, sir.

Q. You examined the floor, did you not?

A. I did.

Q. What did you find the floor to be composed of?

A. It is composed of lime principally, intermixed at this end; lime and quarzite at the bottom.

Q. What is the south end composed of—I mean the end at which the little shaft is made?

A. The same.

Q. And what is the northeast side composed of—the wall I mean?

A. Lime, sir.

Q. And the opposite wall, what is that composed of?

A. Lime, sir.

Q. Now, as I understand you, on the wall there appear slabs of vein matter, such as iron, in which there are spots of ore left there from the mining which has been done in the chamber by those who mined out the contents of the chamber?

A. Yes, sir.

Q. State how the chamber appeared to you.

A. The chamber appeared to me only on the one side, going in a northwesterly direction, with slabs of ore attached to the wall, lime in sight, visible in places.

Q. State whether or not whatever appeared on those walls in the way of iron or vein matter or ore had been pierced at points to enable one to determine what the wall was in the back of them.

A. Yes, sir.

Q. And you could see that it was lime?

A. Yes, sir.

Q. Did you go down on the 82-foot level?

A. Yes, sir.

1444 Q. State whether you examined the works down there.

A. I did, sir.

Q. All along?

A. Yes, sir.

Q. Did the works on the 82-foot level, in connection with the two winzes, fairly prospect that bulk of ground?

A. I think so.

Q. If there had been a vein extending down from the ore chamber, state whether sufficient work has been done on that level to have cut it.

A. I think so.

Q. State whether the vein went down out of the ore chamber downwards. Was your examination such as to enable you to say whether there was any vein of ore going down from that chamber?

A. Yes; my examination was good enough to determine that.

Q. What was your conclusion?

A. I examined that bottom thoroughly, scratched around all over it, and could find no trace of mineral going down of any importance—that is, at that point. I cannot see below.

Q. Did you descend or go up through the upraise from the 82-foot level in the ore chamber, which is marked 11 on the model?

A. I went through.

Q. What did you find in that ground?

A. I found nothing.

Q. What was it composed of?

A. Lime.

Q. What was winze No. 2 composed of from the ore chamber down to the 82-foot level?

A. Lime, principally.

Q. What did you find in winze No. 1 from the 82-foot level down—that is to say, of what rock was it composed?

1445 A. Lime rock, principally.

Q. In following the drift from winze No. 1 towards upraise No. 11 what did you find along there?

A. On the 82-foot level?

Q. Yes, sir.

A. I found a small portion or showing of iron at this point here.

Q. Were there samples taken from that point?

A. Yes, sir; that is the only place showing mineral on the bottom level.

Q. And what is the drift generally composed of?

A. Lime.

Q. Have you seen the samples presented here by respondent, running from sample G to sample M?

A. I have seen them; I have not examined them; I have seen them so as to form an idea.

Q. You know what they are?

A. Yes, sir.

Q. Ore, are they not?

A. Yes, sir.

Q. From the examination which you have made of that mine how many tons of ore of that character, if any, could be obtained from the openings in that mine, from what you saw?

A. That is a big question.

Q. But you have examined it pretty close? I mean what miners call ore in sight.

A. The ore bodies or ore deposits being so small, a person would have to reckon and think considerably in order to determine.

Q. As it appeared to you from the examination you made,

1446 how many tons of ore would you feel safe in saying could be obtained from that mine, from the character of the samples put in evidence by respondent?

A. I think I should have to work it very close to get three tons, as far as my judgment would permit.

Q. In the ore chamber alone how many pounds or tons of that class of ore could be obtained, in your judgment?

A. You might get, probably, a ton and a half by scratching and digging around. I do not know. It would be hard work to do so—that is, limited to the chamber.

Q. Speaking of the whole mine, then, was it or not, from all the appearances, worked out? In a miner's term, so far as ore is concerned?

A. From the indications generally held out, there is nothing there to justify working.

Q. What, if any, value had that mine when you examined it? Was it of any value as a mining property?

A. As far as I am concerned, taking the locality into consideration and the showing of the mine in general, I would not have it at any price. Of course men differ in their opinions.

Q. That is your own opinion?

A. That is my opinion.

Q. Now, I will call your attention to No. 7, if you will look at it, on the model. Did you examine that place?

A. I did.

Q. What did you find there?

A. I found works there; excavations nearly representing that model.

1447 Q. How did it compare with other parts of the mine, so far as the prospect of getting ore is concerned?

A. Somewhat unfavorably with some other points—such as the chamber.

Q. Did you visit the Modoc winze or hole?

A. Yes, sir.

Q. Did you make any examination of it?

A. Yes, sir.

Q. Please describe that place, the ore in sight, or whatever may be in sight there.

A. The Modoc hole is a little hole or winze, probably sunk to a depth of about twelve feet, varying in the length and width, possibly four or five feet long by three or four wide. I could not determine exactly to a foot either way. The bottom of the Modoc hole shows a little ore by the work we did in order to get a sample. It looks as though we arrived at the bottom of mineral.

Q. What did you find in the bottom?

A. A seam with a smooth face, coming in contact with the ledge matter, apparently as though it was cut out.

Q. Have you any interest in this matter beyond what you have stated?

A. None whatever.

Q. Were any samples taken by you or any of the party who accompanied you to the mine?

A. I was in the presence of Mr. Corkhill when he took samples from different points.

1448 Cross-examination:

Mr. MINER:

Q. In mentioning the size of the ore body and the distances do you do that from actual measurement or from estimates?

A. From estimates in places.

Q. Did you have a tape line with you?

A. Yes, sir.

Q. Did you measure any of the ore bodies in the mine?

A. No, sir.

Q. You found some ore at the figure No. 7 represented on the model, did you not?

A. I did.

Q. At what part of that upraise did you find ore?
A. Right at the very top or back, as we term it in a mining sense, as far as work has been executed.
Q. Did you go through the entire distance from the surface of the ground down to the tunnel level?
A. I did not, no rno other man; the connection is not big enough at present. I entered that tunnel C and went down as far as I was permitted, and I also went up the upraise to make a connection.
Q. What kind of ore did you see up there?
A. Carbonate in places; generally iron; very little of any.
Q. Was that an inclined tunnel apparently sunk down on a ledge?
A. Tunnel C?
Q. No. 7 on the model.
A. It was not sunk down at all.
Q. On the surface, was it not?
A. No; this here, representing this portion, they raised to that. Here is the incline sunk down.
1449 Q. This incline from the surface is sunk down to a certain point, where it connected with the upraise?
A. Yes, sir.
Q. Then the upraise is carried up from the tunnel level?
A. Yes, sir.
Q. Were both the inclined tunnel and the upraise constituting this figure No. 7 made on a ledge going down or upon a ledge?
A. The upraise is on a ledge.
Q. And the portion of No. 7 which is the tunnel from the surface down, did that go down on the ledge?
A. There is no visible ledge there now. There is so much dirt there that I suppose it was sunk on the stratification of the ledge.
Q. It appeared to be worked down on a ledge?
A. It appeared that way.
Q. Do you know how far to the east that ledge extended?
A. Beyond the work done?
Q. Yes, sir.
A. No; I cannot see through the ground.
Q. Do you know how far to the west it extended?
A. It did not extend to make any showing in the cross-tunnel going west.
Q. In the main tunnel you did not see it?
A. I did not see any ledge there. There are works there.
Q. Do you know the point where the upraise marked 7 on the model connects with the tunnel cross-drift?
A. Yes, sir.
Q. At what point in the drift does it connect?
1450 A. At the point about here, just before you make the turn.
Q. The upraise connects at a point opposite the mouth of winze No. 1 in the tunnel drift?
A. In the tunnel drift.
Q. Do you know, and did you examine for the purpose of ascertaining this fact, whether the ledge on which the upraise was made

or in which the upraise was made goes down below this tunnel level or not—the easterly drift?

A. I examined thoroughly, as far as my eyesight would permit me, and I could see no trace of that ledge going down in that winze.

Q. Did you examine at the mouth of the winze and immediately back of it, in the roof, back of the mouth of the winze, namely, the northeastern side of the winze in the roof?

A. Yes; I did.

Q. Did you see any ore at that point?

A. I saw some iron there in spots, in the back, going east or northeast.

Q. Was it not similar to that seen in the upraise?

A. Yes, sir.

Q. Then the ledge may have gone back of this winze and pitched down in a northeasterly direction back and outside of winze No. 1?

A. I do not see how it can follow its regular course.

Q. Did you find any ore in the roof of this easterly cross-drift at a point immediately over the mouth of winze No. 1 or a little to the northeast of the mouth of winze No. 1, in the roof of the cross-drift?

1451 A. I found ore in the back of the main tunnel going northeast, as they term it; ore of a lower character—spotted.

Q. Did you examine a point immediately over the mouth of winze No. 1, in the roof of the cross-cut?

A. I did.

Q. How did you examine it?

A. By looking at it.

Q. By holding a candle there?

A. Yes; in the ordinary way of examining it.

Q. Are there not a lot of timbers and sticks in the roof, right over this mouth of winze No. 1?

A. There may be one or two in places; not a lot.

Q. You could not see under those timbers?

A. I could not see under those timbers, without a doubt.

Q. Did you see any ore in the vicinity of those timbers up to the roof?

A. I saw ore going in this northeasterly direction.

Q. Did that appear to be a continuation of the ore that you saw in the upraise?

A. It appeared to be a form of the same; there is nothing continuous.

Q. Is there not a chance for the ore body and this upraise to extend down to the southwest of winze No. 1?

A. Yes; there is a chance, provided it meets with a break of ground, or what we term a slide, to throw such ledge. There is everything there to indicate that that cuts out from the surface to the main tunnel.

Q. This ore that extends in the drift to the northeast—is
1452 there not a chance for that to go down southwest of winze No. 1?

A. Where does it show itself, going down in the bottom between the two winzes?

Q. Is not there a chance for it to go down? You saw ore between the mouth of winze No. 1 and the mouth of winze No. 2, on the easterly cross-drift?

A. Yes, sir.

Q. On which side of that drift did you see that ore?

A. It varies; it is so irregular that it varies; it is so spotted and irregular that I could not confine myself to any particular side at all.

Q. In walking from winze No. 1 towards winze No. 2, on which side would the ore be—on the right or left or under your feet?

A. As I stated before, it is so broken that I could not confine myself as to where these spots were, exactly.

Q. Could you determine the dip of that ore body?

A. I could not.

Q. Why?

A. Because it is so irregular.

Q. Let us get down here to the 38-foot level. Walking from winze No. 1 to winze No. 2, on which side was the ore which you have mentioned in the 39-foot level? Describe the size.

A. On the north side.

Q. Was there any directly overhead?

A. In spots, as I stated before.

Q. Was there any on the right-hand side of you, walking from winze No. 1 to winze No. 2?

A. On the right-hand side? There might have been some, going in that easterly direction. This is pitching southerly, now,
1453 to a certain extent.

Q. Was there an upraise from the 38-foot level?

A. There was.

Q. On calling this side of it the northeast side, was the upraise on the northeast side?

A. I guess it was.

Q. How far above the bottom of the 38-foot level did this upraise extend?

A. How far from the bottom of the 38-foot level? Possibly seven or eight feet, or five or six feet.

Q. Did you go up in it?

A. Yes, sir.

Q. How did you go up there, with a ladder?

A. No, sir; climbed round in a zigzag form on the walls.

Q. Did you climb up in this winze on the 38-foot level?

A. Yes, sir.

Q. How did you get up there?

A. By means of stepping on the walls.

Q. It was at such an angle, then, that you could crawl up it or walk up it?

A. It does not matter about the angle; I can get up any small places.

Q. What was the size of that place?

A. A small hole, probably two or three feet long by three or four feet wide.

Q. How high?

A. I have already stated it.

Q. How high was it from the roof up? You stated from the bottom to the top. I want to know from the roof of the drift to the end of the upraise.

1454 A. Possibly five or six feet.

Q. Was there ore in that of the same character like these samples offered here in evidence by respondent?

A. I cannot say there was.

Q. Why cannot you say?

A. It was strongly impregnated with iron; very little good ore.

Q. Was there any good ore there?

A. There might be—a little.

Q. What was the size of the vein in that upraise?

A. You will find a ledge there from two or three inches to eighteen or twenty inches.

Q. Why did you not measure it?

A. I thought observation would do, without measurement.

Q. Could you trace that vein from that upraise down into the Modoc hole?

A. There may be a possibility of tracing it, in its irregular form. It is not regular by any means. Still you might make a tracing of it from that little upraise up to the Modoc hole.

Q. Could you trace the ore from the chamber up into the 38-foot level?

A. I could.

Q. Could you determine the lip of that ore or vein?

A. No, sir.

Q. Why?

A. Because it is so entwined or irregular.

Q. It may dip to the northeast if it has any dip at all?

A. Yes; there is a possibility of such.

1455 Q. Does it not, in the Modoc hole, pitch to the northeast?

A. In that direction, I guess.

Q. Does not the ore in the chamber, at the points where you see it, appear, all of it, to be going in a northeast direction?

A. No, sir.

Q. In what direction does it appear to be going?

A. Well, it appears when you get back here to the hole of connection, going through the 38-foot level, as though it is winding.

Q. Which way, to the north?

A. Yes, sir.

Q. Did you dig into the northeastern side of this chamber to ascertain how thick the ore was on that side?

A. I did not.

Q. How far would you have to dig in trying to get to the extent of the ore?

A. How far would I have to dig?

Q. Yes, sir.

A. In places I might have to dig six inches, while in others I might have to dig eighteen or twenty.

Q. How did you know that if you never did it?

A. I was a witness to my partner doing this work.

Q. Did he dig into the side of this chamber to see how the ore body extended in?

A. Yes, sir.

Q. At what place in the chamber did he dig?

A. He dug at different places, where the slabs were on the wall.

Q. Do you say that he dug clear through any of that ore deposited on that chamber?

A. He did.

1456 Q. Might he not have just dug off the edge of it? How deep into it did he dig?

A. At different places; it varied according to the width of the seam.

Q. Tell me one place in that ore chamber that he dug into and how far he dug into it.

A. Near the northwest end, within, probably, three or four feet, he dug through the body, as it is termed, I suppose, and it has a possible showing or face of about eighteen inches, I should imagine, through, principally, iron.

Q. He dug in eighteen inches deep?

A. Yes; with his pick.

Q. Did he go through it?

A. He dug through fine lime.

Q. There was lime when he quit digging?

A. Yes, sir.

Q. Is that ore so hard that you have to drill it and blast it out to remove it?

A. It is not. I can pull it down with my hand.

Q. Was the ore he dug into similar to that offered in evidence by the respondent?

A. There might be certain portions of it.

1457 Q. Examine Respondent's Exhibit G and tell me what it is.

A. It is carbonate, iron, and galena?

Q. In your judgment, give me about what proportion of iron that sample carries.

A. I could not confine myself exactly regarding the iron. It is a good piece of ore evidently, and there is a portion of iron with it.

Q. Would you call it iron ore, or galena ore, or carbonate ore?

A. I would call that a piece of carbonate ore, intermixed with iron.

Q. Please examine Exhibit J and tell me what that is.

A. It is carbonate and iron.

Q. Would you call that iron ore or carbonate ore?

A. I would call that carbonate ore.

Q. Containing some iron?

A. Containing portions of iron, with lime and different ingredients.

Q. Please examine Exhibit L.

A. I would call it carbonate.

Q. Has that got iron in it?

A. It has a portion, no doubt; not a great deal.

Q. You do not know what proportion of iron these samples contain?

A. I do not, without assaying them.

Q. When you spoke about the ore that you saw at different places in the mine was it ore of a similar character to this?

A. No, sir.

Q. Was it in any respect like it?

A. I might find a pound in a ton; small, on the average.

Q. The bulk of that ore was iron ore?

A. The bulk of the ore or lead is iron.

1458 Q. How much of it did you take down yourself in person?

A. I do not know. I scratched around. I could not tell you what I took down. I am speaking of what I took down—with what I saw.

Q. You say that it was iron ore. Tell me why you state that the bulk of that ore in that mine is iron ore—from the looks, or in what way would you judge?

A. From appearances, of course.

Q. Because it was red looking?

A. Because it was containing ore or had an iron appearance.

Q. State what the appearances were that enabled you to say that the bulk of that ore was iron?

A. The appearances are a rusty iron appearance, which indicates truly iron, and in places intersected or carrying with it such small pieces or portions of carbonate.

Q. How much of the ore in that mine did you handle at the time of your visit—you in person?

A. I could not tell you, because I was handling rock here, there, and everywhere, taking pieces of rock of various kinds to suit my own inclinations on the examination.

Q. Do these rock samples which I have just shown to you, Exhibits G, L, and J, fairly represent the character of ore that you saw in that mine when you visited it?

A. They fairly represent the very best ore of that mine.

Q. How many candles did you have when you were making your examination?

A. We had three candles generally—that is, the entire

1459 crowd—one apiece. We, as a rule, examined those things together. In case I selected a piece of rock I would merely say, "Fred.," or "Dick," or the party who was with me, "just see this."

Q. Have you ever been in mines of that character before?

A. I have.

Q. In California?

A. No, sir.

Q. In what place?

A. In the States of Nevada and California.

Q. The same kind of ores?

A. Similar kind; carbonate ores, with walls of lime.

Q. Do the deposits of carbonate ores in lime formations usually run in a well-defined ledge, or how do they usually run?

A. It just depends upon the locality in which they are located, as to whether it is a broken country or not.

Q. If it is a broken country how do they run; do they not run in pockets, chimneys, and kidneys?

A. That is what I deem irregular.

Q. Was the country in the vicinity of the Stirling mine broken?

A. Yes, sir.

Q. In what way do the deposits lie in the Stirling mine?

A. In deposits.

Q. Pockets?

A. Yes; or whatever you call it.

Q. What they term in mining parlance chimneys and kidneys?

A. Irregular forms; irregular bodies.

Q. They are found in that shape where the country is broken?

A. Yes, sir.

Q. Such as are at the Stirling mine?

A. Yes, sir.

1460 Q. As the mine presented itself to you on your visit would you consider it a fair prospect at the present time if a miner had it to work for the purpose of seeing if he could not develop something, or would you consider it no prospect at all?

A. It would not suit me.

Q. Ordinarily speaking, would you consider it a claim worth prospecting?

A. I should not.

Q. Is it not a fact that mines of that kind are worked where there is not more than a streak of ore four or five inches in width?

A. Yes, sir.

Q. And do they not run on those streaks for months and months hoping that they will develop into a big pocket?

A. Yes; but how often do they find their expectation come to fact—not once in a thousand.

Q. Did you take any measurements of the ore body there for the purpose of estimating how many tons there were in that mine?

A. I did not.

Q. Did you ever weigh any of the ore?

A. I did not.

Q. Then you are just guessing when you put it at three tons?

A. I consider, speaking with probably a lot of conceit, that I have a fair idea when I see a ledge of vein matter as to what the output may be. I have worked at it long enough.

Q. Could you get three tons of ore in that mine of the kind represented by these samples G, J, and L?

1461 A. It would have to be; otherwise it would be entirely useless.

Q. Could you get three tons of this kind of ore?

A. I did not say I could. I said I might possibly get it.

Q. Taking all the ore there—iron, lead, and silver of every description—about how many tons are there, whether it is good, bad, or indifferent?

A. I could not state regarding the iron, because the iron is predominating beyond everything.

Q. You judge it predominates because most of the ore which you saw was of a reddish, brownish color?

A. It predominates because I say it does.

Q. Did you judge it was iron by looking at it merely?

A. I judge it is iron because I know it is iron by the appearance and by the touch.

Q. What is the difference between the feeling when you touch a piece of carbonate ore and a piece of iron ore?

A. A whole lot of difference.

Q. Describe the difference.

A. Carbonate and lead together, as you find it in these bodies, is heavier—more weighty. Iron is of a rougher character—course, has another touch altogether with the point of the pick in the regular way of working, which a man becomes conversant with in due time after working.

Q. Did you dig in the ore chamber yourself with a pick at the time of your visit?

A. I did at the bottom.

Q. Did you dig in the sides of that ore chamber?

A. I did not on this side here. I refer you to Mr. Cork-
1462 hill the same as I did before. He is the man that took the pick and did the digging.

Q. You came all the way from Candalaria to examine this mine?

A. Yes, sir.

Q. Who asked you to come?

A. Mr. Reddy.

Q. Is it your first visit to Inyo county?

A. Yes, sir.

(Signed) FRANK BARTLETT.

1463 FRED. CORKHILL, a witness on behalf of complainant in rebuttal, sworn.

Mr. REDDY:

Q. What is your name, age, residence, and occupation?

A. Age, 31; occupation, miner; residence, Candalaria, Nevada.

Q. How long have you been engaged in mining?

A. Since 1872.

Q. Where did you begin mining?

A. In Europe; Isle of Man.

Q. How long did you mine there?

A. Nearly a year and a half?

Q. Did you do any other mining in Europe?

A. But a short time, when I worked in iron mines.

Q. What kind of mines did you work in in the Isle of Man?

A. Lead mines.

Q. And in iron?

A. Yes, sir.

Q. When did you come to the United States?
A. May, 1873.
Q. Have you followed mining as a business since you have been in the United States?
A. All the time.
Q. Where have you mined in the United States?
A. Lake Superior.
Q. Any other point?
A. Idaho and Nevada.
Q. Where were you working before coming to Inyo county?
A. Candalaria, Nevada, in the Holmes mine.
Q. How long have you been there?
A. Nine years and a half.
1464 Q. In what capacity have you worked there?
A. Shift boss.
Q. All that time?
A. Not all that time.
Q. Worked awhile as a miner?
A. Yes; I have been shift boss for six years.
Q. Did you ever visit the Stirling mine in New Coso mining district, Inyo county, California?
A. I visited it on the 15th of June, 1886.
Q. Why did you go there to examine that mine?
A. I went there at the request of the Southern Development Company.
Q. Did you go there at your own expense or were you to receive some compensation for your visit; if so, what?
A. My regular paid wages, five dollars a day, and all expenses paid.
Q. Have you quit work in the Holmes mine or are you to return?
A. I am to return, as far as I know.
Q. You expect to return there to your former position?
A. Yes, sir.
Q. You are off on leave of absence for this purpose?
A. On leave of absence to visit this mine.
Q. When did you say you visited the Stirling mine?
A. On the 15th of June, 1886.
Q. Who was with you?
A. Mr. Creer and Mr. Bartlett.
Q. What time did you reach the mine?
A. We reached the mine on the 15th of June.
1465 Q. When did you leave it?
A. On the 17th.
Q. About what time were you engaged in examining the mine?
A. In the afternoon and evening of the 15th and all day of the 16th and probably seven hours on the 17th.
Q. State whether you took all the time that you desired for the purpose of fully informing yourself as to the character of that mine.
A. We made a general inspection of the mine and the formation of the ledge.

Q. Look at Complainant's Exhibit 1 and state whether it represents to your mind the works of the Stirling mine.

A. It does.

Q. Look at respondent's model, Exhibit F, and state whether that represents any section or portion of that mine.

A. It does, a portion of it.

Q. Look at the map and see if you find a place there marked "point of location."

A. I do.

Q. Describe what you saw there in the way of work.

A. There is a little tunnel here going in the side hill which they use for a kitchen. There was a chimney there, smoked and blackened up, and near the mouth of that tunnel there was a hole sunk down seven feet deep.

Q. Were there any croppings or mineral exposed at that point there?

A. There is a bunch of ore at the top of the hole or mouth of the tunnel. There is a bunch of iron showing there. It does not extend to the bottom of the hole. The bottom of the hole was in lime.

1466 Q. You examined the bottom of that hole and the sides and all around?

A. Yes, sir.

Q. State whether there was any vein extending down shown by the works.

A. I gave it a very close examination—cleaned all the dirt out.

Q. Is there any vein extending down from that point?

A. Not in the bottom.

Q. State whether the little shaft and tunnel and whatever work was there fairly prospected the croppings or any stratum in that region.

A. I would consider that it has; it is sunk down in the strongest place that the croppings show.

Q. In sinking down six or seven feet the bottom of the ore streak was found?

A. Yes; it was.

Q. Do you recognize what is marked on the map as the Stirling tunnel and its easterly and westerly branch?

A. I do.

Q. Did you go into the easterly branch of that tunnel?

A. Yes, sir.

Q. Now, look at respondent's model, marked Exhibit F, and state what you recognize as marked there as No. 7.

A. Yes; that is an old stope, as we would term it.

Q. State whether the vein had been fully and fairly stoped there, so far as ore was concerned.

A. It looked as if the best of it was stoped out.

Q. What remained there?

A. Some low-grade ore.

Q. What kind?

A. Some carbonate.

1467 Q. What is the gangue?
A. Iron.
Q. What are the walls?
A. Lime—hanging and foot.
Q. That is the formation of it?
A. Yes, sir.
Q. And the vein is of iron and carrying some carbonate and lead ore?
A. Yes, sir.
Q. What would you call the gangue of the vein?
A. Iron, principally; it may be a little lime and, in places, clay.
Q. How does the ore appear at the point marked "7;" mixed with the iron or otherwise?
A. Mixed with the iron.
Q. State whether it was so mixed as to make it practical to mine and separate the carbonate ores from the iron ore so as to get the ore at anything like a reasonable cost, so as to make it pay.
A. It is so badly mixed that it could not be made to pay, not here in this part of the country.
Q. Have you examined along the easterly branch of the Stirling tunnel from its intersection with the main tunnel to the end of it?
A. I did.
Q. Did you examine between winze No. 1 and winze No. 2, as marked by the model on the map?
A. Yes, sir.
Q. I will ask you if you went down winze No. 2?
A. I did.
Q. And winze No. 1?
A. Yes, sir.
Q. Is there any vein or ledge exposed in those two winzes down as far as the 38-foot level?
1468 A. About ten or fifteen feet below the level in winze No. 2 there is ledge matter shown there, but none on top.
Q. Is it defined or a bunch?
A. It is very regular.
Q. Any pay ore there?
A. Not at that point.
Q. State if you examined on the 38-foot level the entire distance between winze No. 1 and winze No. 2.
A. I did.
Q. What did you find there?
A. Principally iron.
Q. Any ore?
A. Small bunches.
Q. Is it in quantities and in such a condition as to mine it profitably?
A. None that it would pay to mine.
Q. How is it mixed?
A. Mixed with iron.
Q. So as to make it practically impossible to separate the two without great expense?

A. It could not be separated to pay.
Q. It occurs in small spots through the iron?
A. Yes; mixed considerable.
Q. You speak now of ore upon the roof of the 38-foot level?
A. Yes, sir.
Q. State if that extended upwards to any great distance in that shape.
A. The only work on it is a raise.
Q. How high up is that?
A. That is probably six feet above the roof of the level.
Q. What is exposed there, if anything?
A. Iron, principally.
Q. That raise was made there, evidently, to prospect that ore in the roof to see if it did extend up and become more visible as it went up?
A. A miner would think that was the object of raising there.
1469 Q. Did you find it improve as you went up or otherwise?
A. It did not improve; it looked poorer.
Q. State whether winze No. 1 and winze No. 2, in the easterly branch of the main tunnel between winzes Nos. 2 and 1, fairly prospected that ground to determine whether the ore seen in the roof of the 38-foot level extended up or was extensive.
A. I would consider, as a miner, it did prospect it fairly.
Q. Was there any valuable body of ore exposed there?
A. Not at that point.
Q. Or any body of ore that a miner would take out?
A. I did not see any.
Q. Did you examine the Modoc hole? I believe that is sunk down from the bottom of the 38-foot level.
A. Of the little winze that is shown on the model.
Q. Describe that hole.
A. I think it is 12 feet from the bottom of the level to the bottom of the hole.
Q. What did you find in that hole?
A. Some bunches of ore on the sides—iron.
Q. Did you find the bottom of that streak?
A. Yes; it looked like as if it was cut out there.
Q. By what?
A. Lime and clay.
Q. Is there any ore in that to mine which would be regarded by a miner as ground fit to work?
A. Nothing that I saw. It appears as if the best was taken out—gouged out, in a mining sense.
1470 Q. Had been worked out?
A. Yes, sir.
Q. Were you down in what is termed the ore chamber, as represented by the respondent's model?
A. I was.
Q. We call it the ore chamber. Do you call it an ore chamber?
A. I would call it a chamber.

Q. Describe its appearance, what its width is, and what appears there in the way of ore.

A. It had walls on all sides, excepting one corner, and that is the northwest corner, where it shows patches and slabs of ore, but it is cut through and shows the wall behind.

Q. What is that wall?

A. Lime, sir.

Q. What is the opposite wall?

A. On this end?

Q. The opposite side?

A. On the opposite side it is lime.

Q. Any patch of vein matter or ore there?

A. There may be small spots of no importance to work.

Q. How is it at the southeast end, where the little shaft is sunk?

A. The bottom of the chamber, or near the bottom, is principally quartzite.

Q. From there up to the roof?

A. Lime and quartzite mixed.

Q. Of what is the floor composed?

A. Mixed lime and quartzite.

Q. Any vein going down from the bottom of that?

A. I did not see any.

1471 Q. You would have seen one if there was one?

A. I would; I looked for it.

Q. Did you notice the upraise from the 82-foot level into the bottom of that ore chamber marked 11 on the model?

A. Yes; I went down through that upraise.

Q. Through what sort of rock does that opening pass?

A. Principally lime.

Q. Do you say it is properly called an ore chamber, according to your notions?

A. Yes, sir.

Q. Does it show evidence of there having been mining done there for ore?

A. It looks as if ore had been taken out.

Q. What appearance do these slabs that you speak of as having been left in the course of mining —?

A. Cut through on the side and underneath and the bottom.

Q. Would you call slabs samples adhering to the lime wall which you have described, or whether they pierced the lime wall and became encased in the lime?

A. Any miner ought to be able to tell.

Q. What is it, in your judgment?

A. In my judgment, they were slabs on the wall.

Q. What do you base that opinion upon?

A. They were cut underneath and on the sides. I cut through myself to ascertain whether they went in the lime or not.

Q. What did you find?

A. I found lime.

1472 Q. And for that you say that the ore appearing there is simply slabs adhering to the lime wall?

A. Yes; belonging to the ore that was taken out.

Q. If I understand you right, you mean by a chamber lime walls, lime, and lime bottom; in other words, top, bottom, and sides, lime?

A. Cut out on all sides.

Q. Winze No. 2 from the 38-foot level down or from the 55-foot level down; which is the level of the ore chamber? Through what rock is that?

A. Lime.

Q. Winze No. 1 from the 38-foot level down to the 82-foot level. Through what sort of rock is that?

A. Hard lime.

Q. From the drift which runs from winze No. 1 around to upraise No. 11, as marked on the model; what kind of rock did that drift pass through?

A. It is run through iron, started in lime. At a point on the model here there is a bunch of iron. It passed through that into lime again.

Q. I mean at the 82-foot level.

A. On the 82-foot level at this corner.

Q. Does it follow on round to 12?

A. There is a bunch of iron extending probably sixteen feet on this corner and passes through that into lime. It shows in the back of the drift.

Q. State whether you observed No. 12 there, as marked on the side.

A. No. 5.

Q. Did you observe the drift marked 5 on respondent's model?

1473 A. Yes; I went through that drift.

Q. What kind of country does that go through?

A. All lime.

Q. Did you notice the little cross-cut marked 12?

A. Yes, sir.

Q. That is a cross-cut, is it not, comparing it with No. 5.

A. It is a cross-cut.

Q. It runs at right angles, or nearly at right angles, with No. 5?

A. Yes, sir.

Q. Notice No. 6 on the 32-foot level. That runs at right angles with the main drift that you have been describing, running from winze No. 1 to upraise No. 11.

A. Yes, sir.

Q. What is the distance between the end of 12 and the end of 6, between the two points, if the model is built on a scale of ten feet to the inch?

A. If I had a rule or scale I could tell you.

Q. Supposing that to be thirty feet, state whether the drift which runs round from winze No. 1 to upraise 11, and then the drift marked 5 and the cross-cut marked 12, and the cross-cut from main drift near winze No. 1, marked 6, fully and fairly prospect that ground, and whether any vein could exist in it without it having been cut or exposed.

A. As a miner, I would consider it well prospected.

Q. Is there any vein running out of the ore chamber down there that you could discover from your examination?

A. I could see none.

Q. If there had been one you would have seen it, would you not, from the examination which you made?

A. Yes, sir.

1474 Q. Have you noticed sample G, introduced by the respondent in this case, and the other samples down to M?

A. Yes, sir.

Q. From the examination which you have made of the entire mine, how much ore, in your judgment, could be obtained from that mine of the character represented by those samples?

A. Probably three or three and a half tons, approximately.

Q. What amount of ore should you judge could be taken from the ore chamber of the character mentioned?

A. Possibly two tons; that would be the outside, of that character.

Q. State whether the mine, as you examined it through the openings and works there, whether it is fairly mined and worked out or not.

A. I would consider the chamber worked out.

Q. And for ore of the character represented by respondent's samples what would you say as to the other works; worked out or not?

A. The best is all worked out—all that I would consider pay rock; that is to say, that a man could go in and work and make pay.

Q. That is what I mean; whether the mine is worked out or not, in a practical mining sense, as shown by the works and as appears to you from your examination.

A. That is what a miner would term it.

Q. Have you taken any samples of the gangue and ore in that mine?

A. I have, sir.

1475 Q. Name any place in the chamber or that region from which you took any samples of vein matter or ore.

A. I took a sample from the little hole in the northeast corner.

Q. What did that sample represent?

A. It is taken from the bottom, where I would consider the bottom of the chamber.

Q. Did you take any other samples of ore?

A. I took a sample from the side near this hole.

Q. What kind of rock was that?

A. Quartzite.

Q. State any other point that you took samples of ore from.

A. I took a sample from the bottom of the Modoc winze.

Q. At any other point?

A. I took a sample from the 82-foot level.

Q. Of what character was that?

A. Iron.

Q. Are those the only points that you took the ore from?
A. Those are the only points.
Q. What did you do with those samples of ore?
A. I gave them to Mr. McKenzie, the assayer at Swansea.
Q. For the purpose of having them assayed?
A. Yes, sir.
Q. Did you bring what you considered as fair samples of the ore in the mine?
A. Fair samples at the places I took them from.
Q. Did you take a fair sample of the rock which constitutes the floor of the chamber?

A. Yes; I took a fair sample across the bottom of this
1476 small excavation.

Q. State whether the little shaft that is sunk down from the bottom of the floor of the ore chamber and the other work there was sufficient to apprise any one that the bottom of that deposit had been reached.
A. A miner would think so.
Q. The lime floor was there, too, plain to be seen?
A. Yes, sir.
A. Now, I understand you to say that you took a fair sample of the rock of which that floor is composed. Look at complainant's rock sample No. 1 and state whether you recognize that sample or not?
A. Yes; that came from a point at the end of the chamber over the hole, not in the bottom.
Q. Does it represent the bottom of that chamber fairly?
A. It is the general character of the rock found in the bottom of the chamber. In the bottom it is brittle and has a little lime or clay with it. This is what is seen in the sides.
Q. State who took the sample, if you know.
A. I took it myself.
Q. With your own hands?
A. Yes, sir.
Q. State how far down from the mouth of that little shaft that character of rock extends and whether you encountered another character.
A. It extended for about ten feet.

Q. Then what sort of rock is encountered?
1477 A. Lime, from that down.

Q. As I understand, you have taken fair samples of what ore is to be seen in the mine and a fair sample of the iron rock?
A. I have taken samples of iron rock and quartzite and lime.
Q. The samples of iron and ore you have given to Mr. McKenzie, as I understand you?
A. Yes, sir.
Q. From the examination which you made of that mine, its situation, etc., what is the value of that mine, if it has any value, or was it when you examined it?
A. In my judgment as a miner, I wouldn't have it; I would not work it myself.

Q. Is it valuable or valueless?
A. It has no value.

(Recess to two o'clock p. m.)

1478 *Afternoon Session.*

(Counsel and parties met pursuant to adjournment.)

FRED. CORKHILL recalled for cross-examination.

Mr. MINER:

Q. Did you examine the mine on the surface?
A. At certain places.
Q. How far in a westerly direction did the croppings extend on the surface of the mine from the point of location?
A. I saw no croppings near the point of location, except at the tunnel. I found croppings at the mouth of tunnel C.
Q. Did you find any croppings at B and A?
A. Yes, sir.
Q. Were the croppings still further west of the point A?
A. There was a little tunnel west, but it is not shown on the map.
Q. Was there any work done beyond the point marked "hole sunk seven feet?"
A. Yes; the tunnel was run in.
Q. How far did it run in beyond that hole?
A. Six or eight feet; I did not measure it; I think that would be a fair representation.
Q. Was there a drift running west?
A. There was; northwest.
Q. Was there any ore at the point of location about that point besides the little streak you have testified to being in the hole?
A. That is the same streak.
1479 Q. Was there any ore there besides that streak?
A. No, sir.
Q. Were there not croppings there?
A. That was near the surface; the old chimney was on the surface; I would call it croppings.
Q. How long did you work in lead mines?
A. I worked in lead mines in 1872, part of 1873, and again in 1875–'6.
Q. In what part of the country?
A. I worked in the Isle of Man, in Europe, in 1872 and part of 1873.
Q. Are the lead mines that you worked in similar to this Sterling mine?
A. The lead ore is similar to it—galena.
Q. What was the country rock?
A. Lime.
Q. How do you usually find deposits of lead ore in those mines?

A. Generally in veins—inclosed.
Q. Were they in regular defined veins?
A. Pretty well defined.
Q. Does not the ore of that country usually run in pockets, chimneys, and kidneys?
A. The ore does run in chutes.
Q. Did you examine the bottom of the little hole marked 14 on this model?
A. I did.
Q. Of what is it composed?
A. Quartz, clay, lime.
Q. Is there any carbonate ore?
A. There may be some small spots, but of no importance.
Q. Did you work in this bottom?
1480 A. We cleaned out the bottom; I do not know but I cleaned out some myself and picked in the bottom.
Q. And you found pieces of carbonate ore?
A. In the bottom it was quartzite principally.
Q. Was it not sunk down on a vein or stratum of carbonate ore?
A. No, sir.
Q. Did you examine this side of it?
A. Yes, sir.
Q. Did you find any ore?
A. I found no ore there.
Q. You are satisfied you found no ore on the northeast side of this little shaft?
A. I am.
Q. And you found ore on the northeast side of the chimney?
A. I did, sir.
Q. In your opinion, it is a mere slab?
A. It is well represented on the model, this point of it.
Q. Those sticks represent the way that ore is on the side of the chamber?
A. This stick represents the slab just exactly as it is stuck on the wall, the same as that stick is stuck on the model.
Q. Did you measure the width of that across it to get how wide it was?
A. I got the width across the thickness of the stick.
Q. What did it measure?
A. In places it was twenty inches—from eight to twenty inches.
Q. That was the ore streak?
A. That was the ore streak or slab.
Q. What did the vein measure?
1481 A. I saw no regular vein there.
Q. You say there was lime on one side and lime on the other?
A. Yes, sir.
Q. In between was ore and vein matter?
A. It was taken out, most of it.
Q. At the place where you did see it there was vein and ore matter mixed together?

A. There was a slab of ore and ledge matter, which I have shown on the model.

Q. What was the width of the widest part of the deposit, vein matter and ore and everything else?

A. Do you mean the chamber?

Q. Of that slab.

A. I think I told you it was eighteen to twenty inches. There might have been a bulge in it, where it was two feet.

Q. Did you measure it?

A. Yes, sir.

Q. With a tape line?

A. Yes; and I had a scraper, too?

Q. You measured that place?

A. Yes, sir.

Q. That extends clear up into the 38-foot level?

A. There is one slab that extends up and cuts out, what a miner calls a pillar; something left to keep the ground up.

Q. You could trace ore from the bottom of this chamber clear up to the 38-foot level?

A. No; I could find no ore here at the bottom.

Q. How far above the bottom did this ore streak commence on the side?

A. At the nearest place to the bottom of the chamber I
1482 think it was three feet.

Q. Commencing at that point you could trace it up to the 38-foot level?

A. It run up behind the winze to the 38-foot level, what is known as a pillar; left to support the ground.

Q. Did this ore slab have any dip or pitch?

A. No; it run down pretty straight.

Q. From what place did you take samples in this mine which you gave to Mr. McKenzie?

A. From the Modoc hole.

Q. What kind of samples?

A. I took a sample from the bottom.

Q. What was it?

A. It was clay and ledge matter and ore; a fair, average sample.

Q. Was that sample that you took from the Modoc hole anything like Respondent's Exhibits G and J?

A. No; it was not.

Q. Was it as good a sample as Exhibit G or Exhibit L?

A. It was not as good a sample as those exhibits; it was an average of the bottom of the Modoc hole just as it stood and now stands.

Q. What other places did you take out samples from besides the Modoc hole?

A. I took a sample from the bottom of this hole at the bottom of the chamber.

Q. In this little shaft?

A. Right down here across the little shaft.

Q. Was that a sample of ore?

A. It is, just as it now stands, an average across the
1483 bottom.

Q. You took out from the bottom of this little shaft marked 14 a portion of the material which constitutes the bottom?

A. I took an average across the bottom.

Q. Where else did you take any sample from?

A. From this point here.

Q. The 82-foot level?

A. Yes, sir.

Q. What other place besides that?

A. I took a sample from this point, No. 6. It shows better on the map.

Q. What other places did you take samples from?

A. I took a sample from the point of location at the bottom.

Q. What other place did you take any from?

A. I took a sample from the fireplace at the point of location, the croppings that you speak of.

Q. The next place?

A. I took a sample from tunnel B.

Q. Where else?

A. And A.

Q. Where else?

A. I took one from a little raise about forty feet in the westerly branch of the main tunnel—a little stope.

Q. In the 82-foot level?

A. No; on this level.

Q. Look at the model and see.

A. At this point it runs out here; it is on the 38-foot level.

Q. What other places did you take any from?

A. That was all.

1484 Q. Did you take these samples for the purpose of showing the quality of ore in that mine, or did you take them for the purpose of showing what was the formation at the particular point from which you took the samples?

A. I took it to inform myself as to what was there, whether it was good ore or bad ore or poor or low grade.

Q. At those particular points?

A. Yes, sir.

Q. Then if there is no ore at those points this material that you have got would not be ore?

A. Most decidedly it would not.

Q. Then you were not hunting for ore when you were getting samples?

A. I wanted to know just what that would go at this particular point.

Q. Why did you not take some of the ore and have that assayed, too?

A. I did not want to assay the ore?

Q. You did not want to find out what the ore was?

A. I had no object in taking samples from the ore.

Q. Were you instructed at what points to get samples?

A. I was not.

Q. Why did you select these particular points for taking samples?

A. Because I thought to ascertain what was at that point—good or bad ore, low grade or high.

Q. What was your reason for selecting the bottom of this little shaft to take something out of it?

A. I wanted to know what was in there.

Q. Did any one tell you to go to that place and take that stuff out?

A. I had no instructions from any one.

Q. Did you not have a tracing of that map before you went
1485 down there?

A. Yes, sir.

Q. Were not the points pointed out to you on the map which you were desired to visit?

A. No one but the surveyor told me the different points on the map and gave me an idea of the mine.

Q. Were you not told before you went there that the bottom of this little shaft was lime?

A. No one told me what was in the bottom.

Q. And to get something out of it?

A. No, sir.

Q. You are sure no one told you to get anything out of that little shaft?

A. No, sir.

Q. Who told you to give these to McKenzie to assay?

A. Mr. Gorman left word for me in Keeler for me to deliver them to Mr. McKenzie.

Q. Mr. J. S. Gorman?

A. I do not know his initials.

Q. You did not select any of the best grade of ore that you saw in that mine for the purpose of having it assayed?

A. I do not know what grade it is until I see the samples.

Q. Did you select any ore as good as these Exhibits G, L, and J for the purpose of having assays made?

A. No; I do not think I did.

Q. You spoke about finding low-grade ore in that mine. How do you know it was low grade or high grade?

A. By the appearance of it.

Q. What would you call samples G, J, and L of respondent?

1486 A. I would call them pretty fair ore for that place; about the best that I saw there.

Q. Your experience in lead mining is limited to the years 1872, 1873, and 1876?

A. In 1875 and 1876.

Q. What did you do in the lead mines?

A. Worked with the drill and hammer and worked as a miner.

Q. Was it left to your judgment whether you should take out ore or should not take it out?

A. I have worked on ore part of the time; sometimes I would be drifting and sometimes stoping.

Q. When you were working on an ore vein was it left to your judgment whether you should take out that ore or not?

A. The boss took samples and instructed me what was worth saving and what was not.

Q. Then it was not left to you to decide?

A. The boss could not be there with me all the time and I had to select the ore.

Q. He would tell you he wanted this vein of ore taken down, and you would have to take it down, whether it was good or poor?

A. No, sir.

Q. Would you quit working on any ore in the mine of your own volition because it was not good ore, or did you not first inform the boss?

A. If I saw it got poor I would not save that ore; I would throw it away.

Q. Did any one come and examine what you had thrown away and what you had not thrown away?

A. Often.

1487 Q. Would they agree with you about it?

A. Generally.

(Signed) FRED. CORKHILL.

1488 JAMES A. MCKENZIE, a witness for complainant in rebuttal, sworn.

Mr. REDDY:

Q. State your name, age, place of residence, and occupation.

A. My name is James A. McKenzie; my age, 42; my occupation, miner and assayer; residence, Darwin.

Q. How long is it since you learned assaying?

A. I learned it in 1879.

Q. Have you been assaying ever since?

A. Yes, sir.

Q. From time to time?

A. Yes, sir.

Q. Have you assayed for the public?

A. Yes, sir.

Q. Have you bought ores on your own assays?

A. I have.

Q. Has your firm bought ores on your assays?

A. They have.

Q. You consider yourself competent to make assays of lead ores, silver, and gold?

A. Yes, sir.

Q. Do you know Mr. Fred. Corkhill, who has just left the stand?

A. I have met him.

Q. State whether he ever gave you any samples of rock.

A. He gave me some samples last Saturday.

Q. On the 19th of June?

A. Yes, sir.

Q. At what place did he give them to you?
A. At Swansea.
Q. State whether you have since made assays of that rock.
A. Yes, sir.
Q. How many samples did he give you?
1489 A. He gave me twelve.
Q. Can you tell us the value in lead or silver or gold, if there was any, of those ores?

(Objected to by complainant as irrelevant, immaterial, and incompetent, not tending to prove any issue in this case, and that it does not appear that the witness is qualified to assay, nor does it appear that the samples he assayed came from the Stirling mine, or any portion of them.)

A. I can tell you the results I received.
Q. Will you please state them?

(Same objections by respondent.)

A. I made the following assays of the samples given to me by Mr. Corkhill:

		Lead (%).	Silver (oz.).
Sample No.	1	0	3.04
" "	2	31.66	21.14
" "	3	0	0
" "	4	22.08	3.64
" "	5	0	1.21
" "	6	6.84	Traces.
" "	7	3.33	1.45
" "	8	5.41	8.51
" "	9	0	Traces.
" "	10	7.50	8.51
" "	11	8.33	7.29
" "	12	7.50	2.91

1490 Q. Have you those samples?
A. No, sir.
Q. Where are they?
A. I left them in the assay office.
Q. That is, those which you have not pulverized or assayed?
A. Yes, sir.
Q. Why did you not bring them with you?
A. I did not know it was necessary.
Q. How far is it from here to Swansea?
A. Thirty miles.
Q. You were not aware that you were required to bring anything more than the assays of the pieces you have assayed?
A. No, sir.

Cross-examination:

By Mr. MINER:

Q. I would like you to look at Exhibits G, J, and L, and tell me if these exhibits resemble the samples given to you by Mr. Corkhill, which you have testified to?

(Objected to by complainant on the ground that it is not cross-examination.)

A. No; they did not have much resemblance to those?
Q. What was the general difference?

(Objected to by complainant as not being cross-examination.)

A. It shows more lead.
Q. These samples do?
A. I should judge so.
Q. As between the samples given you by Mr. Corkhill and these which would you call first-class ore and which would you call low grade?

(Objected to by complainant as not being in cross-exami-
1491 nation, and the witness has not had an opportunity to assay or determine that question as an assayer, and in that capacity we introduce him.)

A. I should consider these were the highest; I should guess so.
Q. These exhibits are the highest?
A. Yes, sir.
Q. Have you assayed much in lead ores?
A. Yes, sir.
Q. When?
A. In the last seven years.
Q. At what place?
A. Darwin.
Q. Did you pick up assaying yourself?
A. I had an instructor.
Q. Have you been assaying right straight along for 7 years?
A. Off and on; not every day.
Q. You do not claim to be a professional assayer?
A. Not a professional assayer.
Q. You have read about it a little?
A. I have practiced it a great deal and read up on it some.
Q. When you assay for people is it generally as a favor?
A. When I cannot get money for it it is.
Q. Is it your business?
A. Yes; I charge people.
Q. As a business?
A. Yes, sir.
Q. As to these samples that were given to you, there was a big difference between them and these exhibits in regard to the grade and character of the ore?

A. There was a difference in the appearance.
Q. Is not this what you would call good ore in Exhibit L and Exhibit G?
A. I could not guess as to the character of it.
1492 Q. I am asking you for your opinion as a mining man and as an assayer. Look at Exhibits G and L and tell me what grade they are and what kind of ore they contain.

(Objected to by complainant as not being a matter for opinion evidence.)

A. I would suppose it was good ore.
Q. Have you ever assayed any of the ore in the Stirling mine?

(Objected to by complainant as not being cross-examination.)

A. I have assayed ores that I was told came from there.
Q. When did you make those assays?
A. I think it was 5 years ago.
Q. Did Mr. Corkhill tell you these samples came from the Stirling mine when he gave them to you?
A. Yes, sir.
Q. You thought at the time that they did come from that mine?
A. Yes, sir.
Q. You have assayed samples from that mine before?
A. Yes.

(Counsel for complainant moves to strike out the answer on the ground that the witness is speaking from hearsay.)

Q. Who gave you those other samples to assay?
A. Frank Silva.
Q. Are the samples he gave you anything like Exhibits G and L?

(Objected to by complainant as not being in cross-examination.)

A. I cannot tell. It is a long time ago and they were pulverized when they were brought.
Q. Do you remember whether your assays were higher or
1493 lower than the assays of the samples which Mr. Corkhill gave you?
A. I have no recollection as to the amounts.
Q. Were these samples pulverized when they were given to you by Mr. Corkhill?
A. No, they were not.
Q. Did you ever visit the mine?

(Objected to by complainant as not being in cross-examination.)

A. I have been there.
Q. How did these 12 samples given to you by Mr. Corkhill compare with the ore of the Stirling mine?
A. I could not tell. I never examined the Stirling mine enough to know how they would compare.
Q. Were you ever there on a visit with Mr. Gorman one time?
A. Yes, sir.
Q. Did you examine the ore?

A. I examined one portion of it.
Q. Where was that?
A. I do not remember; somewhere near the surface.
Q. Did you go around with Mr. Gorman at that examination?
A. I went around some.
Q. What was your purpose in going there?
A. We went to see if we could get some lead ore.
Q. Cannot you tell how these 12 samples compare with the ore that you saw in the mine on that visit?
A. No; I could not tell as to the ore, because I did not take a general average of it; in fact, I have very little recollection as to the ore.

1494 Q. In your judgment and experience as a mining man and assayer, were not these twelve samples that were given you a very poor lot of samples?
A. I did not expect them to go high.
Q. You could tell that by looking at them?
A. No, I could not tell it; I supposed they were.
Q. Were they such a class of rock that a man usually brings to an assayer to have assayed?
A. Yes; I have made several assays like that before—that is, comparatively speaking.
Q. Would not a person know whether that was worth assaying or not by handling the samples and looking at them?
A. No; I do not think they could tell; they might pass an opinion.
Q. As a mining man, and as an assayer, could you form an opinion of those samples brought to you before you assayed them?

(Objected to by complainant as not being in cross-examination.)

A. I supposed them to be low grade.
Q. Did not you know they were as soon as you looked at them?
A. I did not until I assayed them.
Q. But you had that opinion?
A. Yes, sir.
Q. These samples, G and L, you have an opinion about them now, whether they are high or low grade ore?

(Objected to by complainant as not being in cross-examination.)

A. I have an opinion, but it would simply be a guess.
Q. It is all guessing—guess.

1495 (Counsel for complainant objects to the witness being called upon to guess.)

Q. I want your best judgment as to what kind of ore Exhibits G and L are?

(Objected to by complainant as not being in cross-examination; the witness has already stated he could give no opinion, and it would amount simply to a guess.)

A. I would consider there is lead in that ore, possibly silver.
Q. What grade of ore; what would you call it, as a practical mining man?

(Objected to by complainant as not being in cross-examination.)

Q. Is it not a better class of ore than the 12 samples shown to you?

(Objected to by complainant as irrelevant, immaterial, and incompetent, and not in cross-examination.)

A. I should guess these are the best samples.

(Counsel for complainant moves to strike out what the witness guesses.)

Q. Is it your opinion that they are?

(Objected to by complainant as not being in cross-examination and as irrelevant and immaterial.)

A. It is my opinion.

Q. I see sample No. 3 here is marked with a cipher; that means there was no lead or silver in it?

A. Yes, sir.

Q. That was a piece of waste rock, was it not?

A. Yes.

Q. You knew it was waste rock when you took it to assay?

1496 A. I supposed it to be.

Q. You assayed a thing that you knew at the time you got it was waste?

A. I supposed it was.

Q. You were pretty well satisfied of it?

A. Yes, sir.

Q. What kind of rock was it?

A. A piece of white lime.

Q. Did you ever have a man bring you a piece of white lime to assay before?

A. They have brought me all kinds of rock.

Q. Did they ever bring you a piece of white lime like that?

A. I cannot remember it.

Q. It is the first time a person ever brought a piece of white lime to get an assay of?

A. It may have been. I cannot swear.

Q. You assayed it just the same as you did the others?

A. Yes, sir.

Q. To see whether it contained just lead or silver or anything else?

A. Yes, sir.

Q. You saw it was nothing else but lead and silver?

A. That is all.

Q. No. 5 is marked with a cipher under the word lead. I suppose there is no lead in that?

A. There was no lead.

Q. And that the 1.21 represents ounces of silver?

A. Yes, sir.

Q. What kind of a rock was that?

A. I do not remember. I only remember this white lime.

Q. Here is No. 9. There was no lead in that, but just
1497 traces of silver?

A. Not distinctly.

Q. Most of this rock that was handed to you was waste. You could judge it was waste when you first saw it?

A. There was not much in it as the assay showed. I supposed it to be lime.

Q. Are you positive that these assays are correct?

A. Yes; I believe them to be correct.

Q. Do you know that they are? Will you swear positively that they are correct? There is no mistake about it?

A. To the best of my knowledge and belief, they are.

Q. Do you remember sample No. 2?

A. I remember something about it.

Q. What kind of rock was that?

A. It was the best rock that was there.

Q. What kind of ore would you call it?

A. I would call it carbonate ore.

Q. Is that what is technically—what is known as galena?

A. No, sir.

Q. Do you remember sample No. 4?

A. No; I do not remember it.

Q. Then among these samples there was some carbonate ore?

A. Yes, sir.

Q. And some waste?

A. Yes, sir.

Q. And a piece of white lime?

A. Yes, sir; that is what the assays showed.

Q. The assay does not show this is white lime?

A. It shows there was nothing in it.

1498 Q. Did you assay any of these samples for iron?

A. No; I did not.

Q. You do not know whether they had any iron in them or not?

A. No, sir.

Q. Have you any opinion on the subject?

A. Yes, sir.

Q. What is it?

A. They had the appearance of having iron.

Q. What was that appearance?

A. Iron ore.

Q. Let us know what it is?

A. It is a red rusty-looking iron stain.

Q. Do you judge that it had iron in it from any other reason than that it was that color?

A. No; I do not know that I did.

Q. Did you ever assay any of the ore in this mine to see what percentage of iron it had in it?

A. I never did.

Q. You do not mean that these samples contain nothing else but lead and silver, do you?

A. That is what I assayed them for.

Q. They may have contained something. You never tried to find out what else there was in the rock?
A. No; I assayed them for lead and silver.

Re-examination:

By Mr. REDDY:

Q. You say you went to the mine with Mr. Gorman for the purpose of determining whether you could get any lead ore there or not?
A. Yes, sir.
Q. Could you get any?
A. No, sir.
1499 Mr. MINER: You did not go below the tunnel level?
A. Yes, sir.
Q. You just looked in some little abandoned hole on top of the ground; was not that so?
A. I went in a stope.
Q. That connected with the surface?
A. Yes, sir; I do not think there was an outlet from the stope.
Mr. REDDY: You examined the works between the tunnel level and the surface for ore?
A. I have not a very distinct recollection. I remember going in the stope, and then I think I came down from the surface and went in again.
Q. You satisfied yourself you could not get any lead ore?
A. Yes, sir.
(Signed) J. A. McKENZIE.

1500 GEORGE H. HARDY recalled for complainant.

Mr. REDDY:

Q. You are county treasurer of this county?
A. Yes, sir.
Q. And have been for some time?
A. Yes, sir.
Q. Will you be kind enough to look at the paper I now hand you and state whether you recognize it or not (handing a paper to the witness)?

(Objected to by respondent as immaterial, irrelevant, and incompetent.)

A. Yes, sir.
Q. What is that paper?
A. The auditor's estimate of the amount necessary to redeem a certain piece of property sold.
Q. Have you signed that paper in any way?

(Same objection by respondent.)

A. Yes; I signed the blank receipt.

Q. Endorsed on that paper?
A. Yes, sir.
Q. That is your signature and your official act?
A. Yes, sir.
Q. State whether you received the money therein described, and for the purpose therein described.

(Objected to by respondent on the ground that the transaction testified to by the witness took place since the trial of this action commenced, and the evidence is irrelevant, immaterial, and incompetent, and not tending to prove any of the issues in this case.)

A. Yes; I received the money which is receipted for.
Q. That is your receipt as county treasurer?
A. Yes, sir.
Q. The facts therein specified are true?
A. Yes, sir.
(Signed) GEO. H. HARDY.

1501 Mr. REDDY: I offer in evidence the receipt referred to.
Mr. MINER: I object to it on the ground that the evidence is immaterial, irrelevant, and incompetent, not embraced in the issues in the action, and the receipt referred to appears to be executed since the commencement of this action; further, it does not appear that the law has been followed in making the redemption of the property alleged to have been redeemed.

(The certificate is marked "Complainant's Exhibit 8," is read in evidence, and is as follows:)

"*Certificate of Redemption of Real Estate Purchased by the State.*

"Estimate of the amount required to redeem the within-described real estate, which was sold to the State on the 27th day of February, 1885, for the delinquent takes of 1884, and redeemed on the 22nd day of June, 1886, in accordance with the provisions of an act entitled 'An act to amend an act entitled an act to establish a political code, approved March 12th, 1872, by adding a new section thereto, to be known as section 3817, relating to redemption of lands sold to the State for delinquent taxes,' approved March 2d, 1883.

"*Description of Real Estate.*

"1,500 feet in the 'Sterling mine,' situated in Coso mining district' mining and blacksmith's tools.
"Assessed to the 'Southern Development Company.'

"Delinquent State and county taxes of 1884 on real estate	$48 75
"Delinquent State and county taxes of 1884 on personal property	4 88
"Delinquent poll tax	

1502

"Additional five per cent.	2 69
" Costs	1 50
" Sold to the State for	$57 82
" Interest on the above amounts	5 40
" State and county taxes of 1885	53 63
" Interest on above taxes	1 78
" State and county taxes of 18—	
" Interest on above taxes	
" State and county taxes of 18—	
" Twenty-five per cent. of above amounts	29 66
" County auditor's fee	2 00
	" 150 29

" STATE OF CALIFORNIA, *Inyo County:*

" I, W. L. Hunter, county auditor in and for said county, State aforesaid, do hereby certify that the foregoing statement contains a full and correct estimate of the amount for which the above real estate was sold to the State, with twenty-five per cent. of said amount in addition thereto, with interest on the State and county taxes, on the real estate, from the day of sale to the day of redemption, together with all unpaid State and county taxes for each year since said sale, whether assessed or not, with interest on said taxes from the first day of January of the respective years next after said
1503 taxes were levied to the day of redemption at seven per cent. per annum; also the county auditor's fee for making said estimate.

" Witness my hand, affixed at Independence this 22nd day of June, 1886.

" [SEAL.] W. L. HUNTER,
" *County Auditor.*

" NOTE.—The thirty-fifth fiscal year commences July 1st, 1883, so if property should be redeemed from the State at any time prior to the first Monday of July, 1883, the assessor should be notified in order that he may assess it for said year. If it should be redeemed after the first Monday of July and during the session of the county board of equalization then that board should be notified in order that it may direct the assessor to assess it as prescribed in section 3681, political code. If it should be redeemed after the adjournment of the board of equalization and before the levy of the State and county taxes for the thirty-fifth fiscal year (1883–'4) then it is a question how said taxes could be collected, but if it is redeemed after the taxes for 1883–'4 are levied then said taxes should also be included in the estimate for the amount required to redeem.

" OFFICE OF THE COUNTY TREASURER, COUNTY OF INYO.

" Received of the Southern Development Company of Nevada, redemptioner, one hundred and fifty $\frac{29}{100}$ dollars, in lawful money of

the United States, upon redemption of the within-described
1504 real estate, under the provisions of an act of the Legislature of the State of California entitled 'An act to amend an act entitled an act to establish a political code, approved March 12th, 1872, by adding a new section thereto, to be known as section 3817, relating to redemption of lands sold to the State for delinquent taxes,' approved March 2d, 1883.

"Witness my hand this 22nd day of June, 1886.

"GEO. H. HARDY,
"*County Treasurer.*"

[Endorsed:] "Recorded at request of A. R. Conklin June 23rd, A. D. 1886, at 10 mins. past 5 o'clock p. m., in Liber 'P' of Deeds, at page 233. W. L. Hunter, county recorder, by R. L. Peeler, deputy recorder."

Mr. REDDY: Will you admit the paper which I now present to you to be the document signed by W. L. Hunter, county auditor of Inyo county?

Mr. MINER: I will admit that.

Mr. REDDY: I offer it in evidence.

Mr. MINER: I object to it on the ground that it is immaterial irrelevant, and incompetent, and it does not appear that the law of the State of California has been followed in making the redemption of the property alleged.

(The document is marked "Complainant's Exhibit 9," is read in evidence, and is as follows:)

1505 "AUDITOR'S OFFICE,
"COUNTY OF INYO, STATE OF CALIFORNIA.

"I hereby certify that I have, on this 22nd day of June, 1886, received from A. R. Conklin, for the Southern Development Company, a receipt of the treasurer of Inyo county, dated June 22nd, 1886, and containing the auditor's estimate of the amount (and specifying the several amounts thereof) necessary to be paid to redeem that certain tract of land situate in said county of Inyo and described as follows, to wit: 1,500 feet in the Stirling mine, situated in Coso mining district, mining and blacksmith's tools, and assessed to the Southern Development Company.

"Said land was sold to the State Feb. 27th, 1885, for delinquent taxes for the year 1884, said receipt being made on the application of A. R. Conklin for the Southern Development Company, the person desiring to redeem, for the amount of $57.82 and the taxes, costs, and charges since accrued thereon, amounting to the further sum of $92.47, making a total of $150.29 specified in said estimate, in accordance with an act entitled 'An act to amend an act entitled 'An act to establish a political code, approved March 12, 1872, by adding a new section thereto, to be known as section three thousand eight hundred and seventeen, relating to redemption of lands sold to the State for delinquent taxes,' approved March 2, 1883.

"W. L. HUNTER,
"*County Auditor.*"

1506 [Endorsed:] "Recorded at request of A. R. Conklin June 23rd, A. D. 1886, at 12 mins. past 5 o'clock p. m., in Liber 'P' of Deeds, at page 234. W. L. Hunter, county recorder; R. L. Peeler, deputy recorder."

Mr. REDDY: Will you admit that the signature to the deed now presented to you is the true and genuine signature of John Wilson?

Mr. MINER: I will admit that it is.

Mr. REDDY: I offer the deed in evidence.

Mr. MINER: I object to it as immaterial, irrelevant, incompetent, not tending to prove any issues in this case, and on the further ground that the deed was executed long subsequent to the commencement of this action.

(The deed is marked "Complainant's Exhibit 10," is read in evidence, and is as follows:)

"This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and eighty-six, between John Wilson, of the county of Inyo, State of California, party of the first part, and the Southern Development Company of Nevada, a corporation formed and existing under the laws of the State of Nevada, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release, and forever quitclaim unto the said party of the second part and to its successor and assigns all that certain mining claim situate, lying, and being in the New Coso mining district, county of Inyo, State
1507 of California, and described as follows, to wit: All that certain vein, lode, or ledge of mineral-bearing rock situate about ten (10) miles southwardly from the town of Darwin, on the west slope of the Argus range of mountains, and being fifteen hundred (1,500) feet in length northwesterly and southeasterly and six hundred (600) feet in width, said mine being now known and designated as the 'Cuba mine,' but formerly known as the Sterling mine, said mine having been located under the name of the 'Sterling mine' on the 6th day of December, 1874, by W. B. Herbin, A. W. Sterling, and Henry Dunlap, notice of which location was duly recorded in the office of the mining recorder of said district December 9th, 1874, in book "A," page 97, of said record, and which said mine was relocated by the party of the first part on the first day of January, 1886, under the name of the 'Cuba mine,' together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

"To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part and to its successor and assigns forever.

"In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

"JOHN WILSON. [SEAL.]

"Signed, sealed, and delivered in the presence of—
"A. R. CONKLIN.

1508 "STATE OF CALIFORNIA, } ss:
County of Inyo, }

"On this twenty-second day of June, 1886, before me, A. R. Conklin, a notary public in and for the county of Inyo, personally appeared John Wilson, known to me to be the same person whose name is subscribed to the annexed and foregoing instrument, and acknowledged to me that he executed the same.

"In witness whereof I have hereunto set my hand and affixed my official seal at my office, in the county of Inyo, the day and year in this certificate first above written.

"A. P. CONKLIN,
"*Notary Public in and for the County of Inyo, State of California.*"

(Endorsed:) "Deed. John Wilson to the Southern Development Co. of Nevada. Dated June 22d, 1886. Recorded, at request of A. R. Conklin, June 23d, A. D. 1886, at 10 mins. past 8 o'clock a. m., in Liber "P" of Deeds, at page 231. W. L. Hunter, county recorder."

Mr. REDDY: I now offer in evidence a certified copy of the certificate of incorporation of the Southern Development Company of Nevada, filed with the clerk of Inyo county, California.

Mr. MINER: I objected to it as being irrelevant, immate-
1509 rial, and incompetent, and it appears that the said certificate was not filed in the county clerk's office of Inyo county, California, prior to the commencement of this action.

(The certified copy is marked "Complainant's Exhibit 11," is read in evidence, and is as follows:)

"*Certificate of Incorporation of the Southern Development Company of Nevada.*

"Know all men by these presents that we, the undersigned, have this day associated ourselves together for the purpose of incorporating, under the laws of the State of Nevada, a corporation to be known by the corporate name of the 'Southern Development Company of Nevada.'

"And we hereby certify, set forth, and declare that the objects for which this corporation is formed are—

"To buy and sell lands, town-lots, and other real property.

"To build, maintain, and operate toll-roads, and thereon to collect and receive tolls.

"To buy, locate, hold, and possess water and water rights and privileges, and construct, lay down, and maintain reservoirs, flumes, ditches, pipes, aqueducts, and conduits for the collection and transportation of water; to supply and sell water to the inhabitants of towns, cities, and other places for domestic, mechanical, and other uses, and to build and operate flumes for the transportation therein, by means of water, of wood, lumber, and timber.

1510 "To buy, sell, hold, own, and possess timber lands, and to build, own, and operate saw-mills and machinery, and to manufacture, trade in, and sell all kinds of wood, timber, and lumber.

"To engage in the building, construction, maintenance, and operation upon contract and for others of railroads, toll-roads, flumes, ditches, saw-mills, machinery, and other improvements.

"To acquire and hold all such property, real and personal, as may be necessary for the proper carrying out of the objects aforesaid, and to engage in any such species of trade, business, or commerce, foreign or domestic, as may be found requisite or advantageous in and about the matters herein set forth and declared.

"The amount of the capital stock of this company shall be six hundred thousand dollars.

"The time of the existence of the company shall be fifty years.

"The capital stock shall consist of six thousand shares of the par value of one hundred dollars each, lawful money of the United States.

"The number of trustees of this corporation shall be five, and the following are named trustees, who shall manage the concerns of the company for the first six months: H. M. Yerington, D. L. Bliss, D. A. Bender, W. D. Tobey, H. L. Tickner.

"The principal place of business of the company shall be

1511 located at Carson City, Ormsby county, State of Nevada.

"In witness whereof we have hereunto set our hands and seals this 6th day of October, A. D. 1881.

"H. M. YERINGTON. [SEAL.]
"D. L. BLISS. [SEAL.]
"D. A. BENDER. [SEAL.]
"W. D. TOBEY. [SEAL.]
"H. TICKNER, [SEAL.]
"By D. A. BENDER,
"*His Attorney-in-Fact.*

"STATE OF NEVADA, }
"*County of Ormsby,* } ss:

"On the sixth day of October, A. D. one thousand eight hundred and eighty-one, personally appeared before me, Charles Martin, a notary public in and for the said county of Ormsby, in the State of Nevada, H. M. Yerington, D. L. Bliss, D. A. Bender, and W. D. Tobey, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said instrument as parties thereto and who each duly acknowledged to me that he executed the same

freely and voluntarily and for the uses and purposes therein mentioned.

"In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

"[NOTARIAL SEAL.] CHARLES MARTIN,
"*Notary Public.*

1512 "STATE OF NEVADA, } ss:
"*County of Ormsby,* }

"On this eighth day of October, A. D. one thousand eight hundred and eighty-one, personally appeared before me, Charles Martin, a notary public in and for said county of Ormsby, in the State of Nevada, D. A. Bender, personally known to me to be the same person described in and who executed by power of attorney the foregoing instrument as the attorney-in-fact of H. L. Tickner, named in the foregoing instrument as a party thereto and herein described as the party executing the same, by his said attorney, and the said D. A. Bender acknowledged to me that he executed the same freely and voluntarily as and for the act and deed of the said H. L. Tickner and for the uses and purposes therein mentioned.

"In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

"(NOTARIAL SEAL.) CHARLES MARTIN,
"*Notary Public, Ormsby County, Nevada.*

"STATE OF NEVADA, } ss:
"*County of Ormsby,* }

"I, M. D. Hatch, county clerk and *ex officio* clerk of the second judicial district court in and for said county and State, do hereby certify that the foregoing is a full and correct copy of the
1513 original certificate of incorporation as the same appears on file and of record in my office.

"In testimony whereof I have hereunto set my hand and affixed the seal of said court the 8th day of Oct., A. D. 1881.

"[Seal of 2nd Judicial District Court.]

"M. D. HATCH, *Clerk.*

"STATE OF NEVADA, *ss:*

"DEPARTMENT OF STATE.

"I, John M. Dormer, secretary of state of the State of Nevada, do hereby certify that the foregoing is a true, full, and correct copy of the original certificate of incorporation of Southern Development Company of Nevada as the same appears of record and on file in my office.

"In witness whereof I have hereunto set my hand and affixed the great seal of State.

"Done at my office, in Carson City, Nevada, this twelfth day of May, A. D. 1883.

"[The Great Seal of the State of Nevada.]

"JOHN M. DORMER,
"*Secretary of State.*

"OFFICE OF THE COUNTY CLERK OF
"INYO COUNTY, STATE OF CALIFORNIA.

"I, W. L. Hunter, county clerk of the county of Inyo, State of California, and clerk of the superior court in and for said county, do hereby certify the foregoing to be a full, true, and correct copy of the certificate of incorporation of the Southern Development
1514 Company of Nevada (with the endorsements thereon) as filed in my office on the thirteenth day of November, A. D. 1884.

"Witness my hand the seal of said court this 23rd day of June, A. D. 1886.

"[SEAL.] W. L. HUNTER,
"*County Clerk.*"

(Testimony closed on behalf of complainant at Independence.)

1515 The President of the United States of America to Clement Bennett, Greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you, said Clement Bennett, full power and authority diligently to examine, upon their corporal oaths or affirmations before you to be taken, H. M. Yerington, Laurence F. J. Wrinkle, Charles Forman, H. H. Coffin, and W. V. Price, at Carson City, Ormsby county, State of Nevada, in the office of J. W. Haynie, on the west side of Carson street and just north of the Virginia and Truckee railroad track, in said Carson City, as witnesses on the part of the complainant in a certain cause now pending undetermined in the circuit court of the United States of the ninth judicial circuit in and for the district of California, wherein The Southern Development Company of Nevada is complainant and Frank Silva is respondent, number 3431.

And we do further empower you, said Clement Bennett, to examine on the same behalf and in like manner any other person or persons who may be produced as witnesses before you at said Carson City, Nevada, and we do hereby require you, said Clement Bennett, before whom such testimony may be taken, to reduce the same to writing and to close it up under your hand and seal, directed to Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the
1516 ninth judicial circuit in and for the district of California, at the city of San Francisco, as soon as may be convenient after the execution of this commission, and that you return the same, when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the 110th.

[Seal of the Circuit Court, District of Cal'a.]

LORENZO S. B. SAWYER, *Clerk*,
By F. D. MONCTON, *Deputy Clerk*.

1517 In the U. S. Circuit Court, Ninth Circuit, District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant, *vs.* FRANK SILVA, Defendant. } No. 3431.

On reading the stipulation of the parties herein hereunto annexed and on motion of Langhorne & Miller, solicitors for defendant,

It is ordered that Clement Bennett, Esq., be, and he is hereby, appointed a special commissioner to take the testimony of Frank Silva, John Alexander, Isaac Harris, Nathan Rhine, —— Edwards, T. Boland, Charles Anthony, J. C. Eddy, and Jack Wilson, witnesses on the part of defendant, at Independence, in the county of Inyo, State of California, and such other persons as may be produced as witnesses on behalf of defendant at Independence, and also to take the testimony of such witnesses as may be offered by complainant, either to its case in chief or in rebuttal, at Independence.

That the testimony of said witnesses and their examination be taken and conducted upon oral interrogation; that said tes-
1518 timony may be introduced in evidence by either party, subject to such objections only as may be made to questions put or evidence offered and noted by the commissioner at the time of examination, all other objections being deemed waived.

That the taking of said testimony commence on June 15, 1886, at 11 o'clock a. m., and be continued from day to day, Sundays and holidays excepted, until completed; that at the close of the defendant's testimony, as above provided, the taking of testimony in rebuttal by complainant shall be commenced and proceed in the usual manner until completed, in accordance with said stipulation; that the taking of said testimony shall be conducted in every manner as though taken before the regular standing master in chancery.

May 29, 1886.

(Signed) LORENZO SAWYER,
Circuit Judge.

Stipulation.

In the Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, Complainant,
vs.
FRANK SILVA, Defendant.

It is hereby stipulated and agreed that a commission issue
1519 to Clement Bennett to take the testimony of Frank Silva, Jno. Alexander, Isaac Harris, Nathan Rhine, —— Edwards, T. Boland, Charles Anthony, J. C. Eddy, Jack Wilson, witnesses on the part of the defendant in this action, at Independence, in the county

of Inyo, State of California, and such other persons as may be introduced as witnesses on the behalf of the defendant at said Independence, and to take the testimony of such witnesses as may be offered by the complainant, either to his case in chief or in rebuttal, at said Independence.

That the testimony of all witnesses may be taken upon oral interrogation; that the testimony so taken may be introduced in evidence by either of the parties to this action, subject only to such objections as may be made to questions put or evidence offered and noted by the commissioner at the time of the examination, all other objection to such evidence being hereby expressly waived.

It is further stipulated and agreed that the taking of this testimony for defendant before said commissioner at Independence shall be commenced on the 15th day of June, 1886, at 11 o'clock of that day, and shall be continued from day to day thereafter, Sundays and holidays excepted, until all of the testimony to be taken at Independence on the part of the defendant shall be completed; and at the close of the testimony on the part of the defendant at said Independence the taking of the testimony of the witnesses offered on the part of the complainant shall be commenced and continued from day to day thereafter, Sundays and holidays excepted, until
1520 all of the testimony to be taken at said Independence on the part of complainant shall be completed.

It is further stipulated and agreed that the evidence in this cause to be taken in San Francisco shall be taken orally before S. C. Houghton, Esq., examiner of this honorable court.

Dated San Francisco, May 29, 1886.

(Signed) P. REDDY,
Solicitor for Complainant.

(Signed) LANGHORNE & MILLER,
Solicitors for Defendant.

1521 I certify that, previous to giving his deposition, each of the witnesses in the foregoing record named was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the said depositions were, and each of them was, taken in the presence of the solicitors for each party to the suit; that said depositions were taken down in short-hand by me and transcribed under my direction, and were then read over to and signed by the respective witnesses in my presence.

In testimony whereof I have hereunto set my hand this — day of July, A. D. 1886. —— ——.

Endorsed on cover: N. California C. C. U. S. No. 1210. The Southern Development Company of Nevada, appellant, *vs.* Frank Silva. Filed October 13, 1887.

12

125-24

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1887. No. 1210.

The Southern Development Co. of Nevada,

Appellant,

vs.

Frank Silva.

BRIEF FOR APPELLANT.

WM. M. STEWART,
A. T. BRITTON,
A. B. BROWNE,
Attorneys for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA,
APPELLANT,
v.
FRANK SILVA.

No. 1210.

OPENING ARGUMENT FOR APPELLANT.

Statement of the Case.

The plaintiff, The Southern Development Company of Nevada, a corporation, purchased from defendant, Frank Silva, on February 15, 1884, a mining claim known as the Sterling Mine, with other mining property, in Inyo County, California, paying him therefor the sum of $10,000.00. After conveyance and delivery of possession of this mine by defendant to plaintiff, it, on or about May 7, 1884, sought to rescind its purchase on the ground of fraud committed by the defendant in the sale, and then tendered to the defendant a reconveyance of the property, and demanded from him the return of the $10,000 paid for the mine. The defendant refused to rescind, when the plaintiff brought suit in the Superior Court of Inyo County, California, to set aside the sale and to recover from the defend-

ant the price paid for the mine, together with $5,000 as damages, which plaintiff claimed to have expended in working the mine.

This suit was removed into the United States Circuit Court on the ground of the diverse citizenship of the parties, the plaintiff being a corporation organized under the laws of Nevada, and the defendant a citizen of California. The plaintiff twice amended its complaint in the Circuit Court. The second amended complaint upon which the case was heard charges the defendant with certain false and fraudulent acts and representations concerning the value of the mine and the extent and richness of its ore bodies which, it is averred, induced the plaintiff to purchase the mine and pay $10,000.00 therefor, when the mine was, in fact, valueless, as the defendant well knew. It is further averred that $7,500 of the price paid for the mine was deposited by defendant in Wells, Fargo & Company's Bank, at Carson City, Nevada, which bank issued its certificate of deposit in usual form to the defendant, who had possession of this certificate when the plaintiff sought to rescind the transaction; that the plaintiff, at the time of such rescission, tendered to the defendant a deed reconveying all the property conveyed by him to the plaintiff; that the defendant refused to rescind or to restore to plaintiff the $10,000, or any part of it, which he had received from the plaintiff. The relief sought, as stated in the prayer of the second amended bill of complaint, is—

"That said contract of sale and purchase in this bill set
"forth be rescinded, and that the said defendant be adjudged
"and decreed to restore to complainant all that he received
"under said contract, and that said deed of conveyance, or
"such other deed of conveyance as the court may adjudge
"and decree, may be thereupon delivered to him, and for
"such other and further relief as to this court may seem

" just and equitable and as the nature of the case may re-
" quire."

See Record, original page 95.

The case was proceeded with and determined as a case in equity. A decree was entered dismissing the bill generally, although the learned judges of the court below, in their opinion, observed that—

" It may be well doubted whether the bill ought not * * *
" to be dismissed for want of jurisdiction, on the ground that
" the complainant has an ample remedy at law within the
" rule laid down by the Supreme Court in *Buzard* v. *Houston*
" (7 Sup. Court Reporter, 249; 119 U. S., 347), brought to
" our notice since the following opinion was written," &c.
(Record, original pages 210–1).

As this court has frequently said the objection that there is an adequate remedy at law goes to the jurisdiction, and will be enforced by the court *sua sponte*, though not raised by the pleadings nor suggested by counsel.

If this court should be of opinion that the bill in this case cannot be sustained on the ground that the plaintiff has an adequate remedy at law, then the decree appealed from should be reversed, with instructions to dismiss the bill for want of jurisdiction, without prejudice to the right of the plaintiff to maintain its action at law.

Buzard v. *Houston*, 119 U. S., 354.
Rogers v. *Durant*, 106 U. S., 644.

If, however, this case is one in equity, then it is necessary to consider its merits, which we will proceed to discuss.

Error Complained of.

The question involved in the merits of this appeal is as to the decree which should have been entered upon the evi-

dence. The error complained of is the rendition of a decree dismissing the bill, when, as appellant contends, the proof justified a decree in favor of the plaintiff rescinding the sale, and requiring the defendant to restore to the plaintiff the ten thousand dollars paid for the mine. This question involves an examination of the evidence, to which we will now make reference, giving the marginal pages of the printed transcript.

ARGUMENT.

The evidence shows that the defendant became the owner and took possession of the Sterling mine in 1876 (testimony of Edwards, pp. 1083–4, 1089–90), from which time the defendant possessed and worked this mine until he sold it to the plaintiff in February, 1884. During this time the defendant Silva did all of the underground work, from and including the main tunnel, which had been done in this mine before the sale to the plaintiff (testimony of Silva, pp. 1389–90). The underground work is shown on respondent's Exhibit "E" (p. 68, printed record), and included the main tunnel and cross-drifts therefrom, also the winzes numbered 1 and 2 from the easterly cross-drift. By means of winze No. 1 the place called the "ore chamber" had been discovered. At the time of the sale this "ore chamber" was an excavation about 16 feet in depth, about 9 feet wide at the bottom, being narrower at the top, and having a length of from 10 to 15 feet. The sides of this chamber were covered with ore, which appeared to extend downwards and lengthwise from the bottom and sides of the chamber. The rock in place in the bottom of the chamber could not be seen or examined, as it was covered by loose ore and material which had apparently crumbled down from the top and sides of the chamber (Yerrington, pp. 324, 363, 398, 400–1,

451; Forman, pp. 473, 480–1, 487–9; Coffin, p. 523; Eddy, pp. 1174–5).

While the ore chamber was in this condition it was examined, pending negotiations for purchase of the mine, by H. M. Yerrington, the agent of the plaintiff, accompanied by Charles Forman, an experienced miner, and the defendant Silva, and J. C. Eddy. Samples of the ore were taken by Yerrington and Forman for purposes of assay. The sides of the ore chamber were covered with ore of high grade, giving average assays of about 30 ounces in silver and 45 per cent. in lead (Forman, p. 464).

The appearance of the chamber indicated an extensive deposit of valuable ore, at least 500 tons in quantity (Yerrington, pp. 323–4, 327; Forman, pp. 464–5; Coffin, p. 524).

No other part of the mine exhibited such favorable indications of an ore body as the ore chamber; hence this point was the chief subject of examination and discussion by the parties in the negotiations which led to the purchase of the mine.

As a result of the examination of the mine by Yerrington and Forman, acting for the plaintiff, in company with the defendant Silva, and Eddy, and of the statements made by Silva to Yerrington and Forman during and after such examination (which statements we will hereafter discuss), the plaintiff, through its agent Yerrington, on February 1, 1884, offered the defendant $10,000 for the Sterling Mine, with its extension and two springs of water, which offer was accepted, the defendant executing and delivering to the plaintiff a deed of the mine on February 15, 1884, and then receiving the purchase price, $10,000.

No importance was attached by either party to the property, other than the Sterling Mine, included in the conveyance of Silva to the plaintiff. Yerrington testifies that he

never saw the springs nor did he ever go on the ground covered by the extensions of the Sterling, and that no value was attached to the property other than the Sterling Mine; that the money was, in fact, paid for the Sterling Mine (pp. 637–8).

The plaintiff, through its Superintendent, Coffin, received possession of the mine from Silva about March 9, 1884, and commenced work in running the 82-feet level drift from the bottom of winze No. 1, with the purpose of getting under and intersecting the body of ore supposed to exist in and below the "ore chamber" (Coffin, pp. 518–520).

The defendant Silva was put in charge of the work as foreman, in which employment he continued until the drift had been run about half way to the ore chamber, when he quit work and left the mine, saying he was sick (Coffin, pp. 520, 591).

The drift was continued to a point under the ore chamber, where it was connected therewith by a vertical up-raise 27 feet high (Coffin, p. 521).

This up-raise was run through lime-rock, which was found to compose the bottom of the ore chamber, upon cleaning it out, by removing the ore and waste which lay in the bottom (Coffin, pp. 521, 525).

All of the ore in the chamber—which proved to be only 25 to 30 tons—was then taken down, and was found to be a mere shell or covering over the lime-rock (Coffin, pp. 525–7; Price, p. 611).

In taking down this ore the miners discovered several drill-holes which had been run in this ore chamber through the shell of ore into the lime rock behind (Coffin, pp. 528–530, 567; Price, 611–2).

Similar drill-doles were also found in other parts of the mine (Coffin, pp. 532–4).

These drill-holes were from 18 inches to 3 feet in depth, and with one exception had been driven through the shell of ore into the lime rock behind (Coffin, pp. 528, 532).

By means of these drill-holes the ore had been prospected and its thickness determined, as the ore was of dark-red color while the lime rock was white (Coffin, pp. 529–531). These holes had not been used in blasting, and hence were not drilled in the ordinary course of mining for breaking down the rock, but were evidently for the purpose of prospecting merely (Coffin, pp. 531–4, 576). None of these holes were visible before the ore was broken or disturbed; they were only discovered by the work of the miners (Coffin, pp. 536–7; Price, pp. 613–4). Some of them were found to be filled up with soft ore in order to hide them (Yerrington, p. 351). After thoroughly prospecting the mine and removing all the ore that would pay for its extraction, the plaintiff was only able to get from 50 to 60 tons of ore from the mine (Coffin, pp. 539, 541, 564–5; Price, pp. 618, 621; Yerrington, p. 352).

All of the ore that was taken out which was of any value was sold to Gorman, and amounted to only 36 tons (Yerrington, 365–6; Coffin, 526–7). After this yield of ore the mine was exhausted and valueless (Yerrington, pp. 364–6).

The defendant introduced the testimony of several witnesses to the effect that they had examined the mine, and that it exhibited ore in different places, but no one of these witnesses gives any estimate of any quantity of ore which the mine would produce, or ventures an opinion that the mine has any value. On the contrary, the uncontradicted testimony of plaintiff's witnesses shows that the mine is entirely worthless. Frank Bartlett, an intelligent miner, who made a most thorough examination of the mine, gives a particular description of it at all points, and says that in his judgment the mine would have to be worked very close to get three tons of ore of the character of the samples put in evidence by the defendant; that there is nothing in the

mine to justify working it; that the mine is of no value (1445–6). To the same effect is the testimony of Fred. Corkhill, a miner (p. 1474). The testimony of Richard Creer, an experienced miner, is to the same effect (p. 1413). After the plaintiff ceased work, J. S. Gorman, also an experienced miner, examined the mine from the tunnel level up to the surface for the purpose of determining whether any considerable quantity of lead or other ores could be obtained; he concluded that there was not five tons of ore in sight, and he was not sure of getting that. He did not examine below the tunnel level, because he did not think it worth while (pp. 642–3). James A. McKenzie, a miner and assayer, testifies that he went to the mine with Gorman for the purpose of determining whether or not they could get any lead ore there, and that he could not get any (pp. 1498–9).

The testimony of the witness, John S. Gorman, shows that in April, 1883, Silva prepared himself with a piece of steel to make a long drill to prospect with, and said it would come in handy in prospecting the ground or "feeling ahead" (pp. 644–6, 673). Mr. Coffin says that the drills found at the mine when he went there were drills about ten inches long (pp. 536–7); that he at first did not see any drill of sufficient length to drill the holes found in the ore chamber, but afterwards he found a drill about six feet long to the left of the main tunnel outside on the hills which appeared to have been used as a drill, as the point was dull and the other end was burred by being hammered (pp. 537–8). This drill was not brought there by Coffin, or by his direction (p. 538).

The defendant Silva admits that he got a bar of steel from Gorman seven feet long, out of which he made two drills, one about four feet, and the other about three feet long. He denies using the words "prospecting" or "going

" ahead " in his conversation with Gorman at the time he got the long piece of steel (pp. 1398–9).

From all the testimony, there can be little, if any, doubt that defendant Silva made the drill holes before the mine was purchased by the plaintiff. He had been in the possession of the mine for eight years, personally directing all the work that had been done in the mine; he had himself run the drifts and openings which intersected the ore chamber; hence he was the first man that ever had access to this ore chamber, and it appears that he kept the entrance to the tunnel locked (Yerrington, p. 317). There is no foundation for saying that these drill holes were made by any other person than Silva. After plaintiff took possession of the mine, through its Superintendent, Coffin, he had full charge of the mine and all the work which was done where the drill-holes were found. Coffin testifies positively that these drill-holes were not made by him, or under his direction, and they could not have been made without his knowing it (pp. 538, 581, 590–1).

Silva, undoubtedly, knew of all the work which had been done in this mine before he sold it to the plaintiff; he was the first man who ever saw, or had access to the ore chamber, for he ran the drifts which intersected it. At all times after these drifts were run, he had the exclusive possession of the mine until it was delivered to the plaintiff. It seems preposterous to suppose that these drill-holes were made without the knowledge of Silva; that while he was the sole owner in the possession of this mine, some stranger, without interest or motive, should have drilled these holes without Silva's knowledge or consent. The circumstances of the case would overcome the positive denial of Silva that he drilled these holes, but he made no such denial.

His testimony on this subject is as follows:

"Q. Did you do any work in that chamber which you "covered up and concealed from Mr. Yerrington, Mr. For- "man, or any other persons?—A. I did not do any work "at all, or conceal anything.

"Q. Did you drill any holes in that chamber in any place "which you afterwards concealed?—A. No, sir; I never "drilled any holes in that mine, *except what I had to do as* "*a miner* (p. 1365).

"Q. Did you drill any holes in this mine and fill them "up?—A. I never blasted or drilled any there *except what* "*was required as a miner*" (p. 1367).

These answers were given to questions put by Silva's own counsel. Each question seems to be carefully framed so as to cover two points, first, the drilling of the holes, and, second, their concealment by Silva. If Silva had answered these questions by direct negative he could not be punished for perjury by showing that he drilled the holes. It would also be necessary to show that he concealed them or filled them up. If Silva's counsel expected to show by their client that he did not drill these holes, nor have knowledge of their existence, they certainly would have asked questions calling for direct and separate answers, 1, as to whether or not he drilled these holes, and 2, whether or not he had knowledge of their existence. But Silva's answers to the questions put amount to a confession that he drilled these holes. To the second question he answers: "No, sir, I never "drilled any holes in that mine *except what I had to do* as a "miner." To the last question he replies: "I never blasted "or drilled any there except *what was required as a miner*." The exact description of these holes given by plaintiff's witness—that they were run through the ore into the lime rock behind, and had not been used in blasting—was before Silva and his counsel when these questions were asked and answers given. Yet, Silva is not asked by his counsel whether or not he drilled these particular holes, or whether or not

they were such as were required in mining. When Silva's counsel asked such questions to which Silva had given such answers, the plaintiff's counsel might well content himself with no cross-examination upon the subject, for Silva's testimony, as elicited by his counsel, was a confession that he drilled these holes, and had knowledge of their existence.

This being so, it was a gross fraud and imposition upon the part of Silva to exhibit the ore chamber which appeared to be a valuable and extensive ore body—the drill-holes being concealed—without informing his vendee of the fact (which they certainly had no equal opportunity with him of knowing) that this ore body was a shell and a sham without extent or value; but Silva was not merely silent when he exhibited this mine to Yerrington and Forman. On the contrary, he appears to be ready and eager to assure Yerrington and Forman of the considerable value of this mine by his express statements and representations.

Yerrington testifies that while he was in the mine with Silva, and after they had gone through the excavations below the main tunnel, he said to Silva, "Now, have you "shown the whole of this mine?" to which Silva replied "Yes; everything" (p. 328; see also pp. 334, 352, 389). Yerrington further testified that afterwards, at Carson City, Nevada, before the trade was closed he said to Silva:

"'Now, Silva, I think I will take this mine for $10,000, "'and I want to know one thing before I close with you. "'I want to know if you have done any work in that mine "'in any way, shape, or manner around those ore bodies "'that you have not shown to me, that you have not told "'me of, or that I am ignorant of?' He said 'No, sir; I "'have not.' Says I, 'Are you sure of that?' He said "'Yes; I am positive'" (pp. 328–9).

The witness Forman, who examined the mine with Yer-

rington, testified as to the following statements made by Silva during such examination:

"Q. State whether you made any inquiry of Mr. Silva "as to the work which had been done in and about that "chamber or mine which would reflect any light on the "matter of the quantity of ore?—A. I asked him if there "had been any work done that we could not see that would "reflect any light on the quantity of ore developed there, "or the quantity of ore that might be found in the mine. "He said, No; there had not been any that I had not seen. "Q. State whether he claimed to have pointed out to you "all the work which had been done in the mine?—A. Yes; "he claimed to have pointed out all the work which had "been done which would throw any light on the quantity "of ore there or the extent of the deposit" (Forman, p. 467).

After the discovery by the plaintiff of the secret drill-holes and the fact that the mine was valueless, plaintiff's agent had defendant Silva arrested on a criminal charge for obtaining money under false pretenses. After his arrest, Yerrington had a conversation with him at a place called Keeler, of which he gives the following version in his testimony:

"I talked very severely to him. I told him I was very "sorry in the first place to be obliged to have the sheriff "go for him. He complained he had been treated badly about "that. I said, 'You have simply robbed me in this tran-"'saction and I do not propose to stand it.' That he de-"nied. I said to him 'In the first place, you stated to me "'positively and insisted upon it that there was 2,000 tons "'in this mine; you told me at Carson there was no secret "'work done in that mine and I find it has been drilled; "'it is absolutely worthless and you knew it at the time "'you sold it to me.' Said I, 'I do not propose to stand "'this at all.' There was a piece of chalk on the counter. "He said there were 2,000 tons of ore in the mine and in-

" sisted that it was so and that he knew it. He took up a " piece of chalk and laid out on the floor how the body of " ore stood *and how the drill-holes were and insisted they* " *were put in as a miner worked a mine.* I told him I knew " better; it was all nonsense. He had not fired off a single " hole, and it was simply to ascertain whether this ore body " went down or not. That was what the drilling was done " for; it was robbery on his part, cold-blooded. I felt very " indignant and very much annoyed and talked very severely " to him. I finally said, 'You have committed a great " 'wrong here and I want you to rectify it as far as you are " 'able. I am prepared to give you a deed of this property " 'and you give me back my $10,000; we have expended " 'about $5,000 in the way of buildings and works and put- " 'ting in car tracks and blacksmith shops and all the things " 'necessary. It cost me to get my teams down there to " 'haul this ore $1,000. You say there are 2,000 tons of " 'ore in the mine. I will give you this whole business and " '$5,000 worth of buildings and you give me back my " '$10,000. He said, 'I will not, that is flat; it is no use " 'talking'" (pp. 355–7).

Yerrington further testified, on cross-examination, as follows:

" Q. What did Silva say at Keeler when you charged him " with having drilled this mine?—A. He did not deny it. " Q. He did not deny it?—A. No" (p. 423).

While Silva testifies that he told Yerrington that he had shown him all the work that had been done in the mine by him or by his direction (Silva, 1355), he did not, as we have seen, deny that he drilled the holes, or had knowledge of their existence, and he does not pretend that he showed these holes to Yerrington or Forman. Concerning the conversation at Keeler with Yerrington, the defendant Silva testified, as follows:

"We went back to the office, and Mr. Yerrington got a "piece of chalk, and he marked on the floor this ore chamber. "He represented the ore chamber, and he was trying to show "a place that he said he found the drills filled up, and I told "him there was nothing of the kind; that I never did any "blasting there, or any drilling, *excepting what a miner did "in any work in a mine*" (p. 1385).

Nowhere in his testimony does the defendant Silva squarely deny that he made the drill-holes found in the work prosecuted by the plaintiff. He simply says, in substance, that he never did any drilling, except what he had to do as a miner. This is, substantially, an admission that the drill-holes were made by him.

Taking into consideration the opportunity and the means of making these drill-holes, which Silva is shown to have had, and also the curiosity and interest which would naturally have impelled him to prospect his mine in this way during his long ownership of it; and, also, taking into consideration the fact that Silva would not, and did not, deny positively that he had drilled these holes, but simply says that he drilled no holes except those which were necessary in mining, there can be no doubt that all these drill-holes, discovered in the ore chamber and other parts of the mine, were drilled by Silva, or under his direction. By means of these drill-holes Silva had undoubtedly learned that the ore exposed in the ore chamber was without extent or value. Yet the testimony of Yerrington and Forman establishes the fact that Silva distinctly represented to them that he had shown them all the work which had been done in the mine that would throw any light upon the quantity of ore therein.

Silva further represented to Forman and Yerrington that the bottom of the ore chamber was solid ore, as good as the ore exposed on the sides of the chamber. Forman testifies

that the bottom of the ore chamber could not be examined without the removal of many tons of loose material, which they had no facilities for doing (pp. 472–3, 481, 487–9); that he asked Silva about the bottom, who said that "the bottom was as good or better than any ore which we saw in the sides of the chamber" (pp. 463, 483).

Yerrington testifies that Forman asked Silva if the floor was solid ore, to which Silva replied in the affirmative (p. 324).

In giving his testimony, Yerrington did not at first remember that in the conversation between Forman and Silva any comparison was made between the ore on the bottom and that on the sides of the ore chamber, but afterwards he testified that he had refreshed his memory upon the subject, as he had the means of doing, and that he was then positive that Silva had said, in answer to Forman's inquiry as to the bottom, that it was as good ore, if not better, than that on the sides (p. 362).

Silva's testimony is not satisfactory or explicit upon this subject. His answers are evasive. He says:

"Q. Did Mr. Yerrington or Mr. Forman ask you any "questions about the bottom of the chamber at that time? "—A. Mr. Yerrington and Mr. Forman, after they got a "pick down there and a hammer, went and took a sample "across that bottom and behind the ladder, and on the side "of the chamber.

"Q. What did they say to you, if anything, about the "bottom?—A. They asked me what I thought about the "prospect of the ore body. I told them I thought it would "be very extensive, for the reason that it went back and "sink that winze, and run that drift to tap it" (pp. 1362–3).

"Q. Do you remember what Mr. Forman said to you "when he was in this chamber, speaking about the bottom "of it?—A. Yes, sir.

"Q. What did he say?—A. I cannot tell exactly what he "did say.

"Q. Did Mr. Forman make this remark to you at that "time, or in substance: 'Silva, it is a suspicious circum-"'stance to a mining man to see loose dirt lying on the "'bottom of this place; what is there underneath this "'loose dirt?'—A. There never was a word said about that. "They asked me this: what I thought of the ore body, "and I said I thought it would be extensive.

"Q. Did you think so at the time?—A. Of course I did; "I think so yet."

The testimony of defendant's witness, J. C. Eddy, confirms Yerrington and Forman on this point.

Eddy says:

"Q. Did you hear Mr. Forman say anything about the "bottom of this chamber being filled up with waste? If "so, state.—A. They spoke about there being some dirt in "the bottom of it. I think either Mr. Yerrington or Mr. "Forman spoke about this dirt here *and what was in the "bottom*" (p. 1177).

Silva further represented that there was not less than 500 tons of ore, in his judgment, in and about the ore chamber (Forman, pp. 464–5; Yerrington, 327); that there were at least 2,000 tons of ore in the mine (Yerrington, p. 326; Forman, pp. 467–8); also that the mine was worth $15,000 (Forman, 472; Yerrington, 363).

Silva certainly knew that these statements were untrue as he had thoroughly prospected his mine and knew that it was without value. The fact that Silva had done all the prospecting work gave him special opportunity for knowing the value of the mine, the extent of its ore bodies, and made his opinion or judgment a fact material to the proposed transaction. And these statements as to his opinion, which were untrue and made with an intention to mislead, were fraudulent and afford grounds for relief.

Pomeroy's Equity Jurisprudence, volume 2, sec. 878.

It is obvious that the representations and statements of Silva were of fact and were material in determining or estimating the extent of the ore-bodies in the mine; and that they were believed and relied upon by the plaintiff in making this purchase clearly appears from the testimony.

Yerrington testifies that he had no knowledge of any work done in the mine, except that imparted to him by Silva, and that Silva's representations necessarily had great effect upon him and induced him to make the purchase (p. 342). Had he known that secret work had been done in the mine which showed that the ore-bodies had no extent or value and that the bottom of the ore chamber was in lime, he would not have touched the property at any price (p. 343).

Forman testifies that the representations of Silva entered materially into his calculation as to the number of tons of ore in the mine (pp. 466–8); that had he known the fact that the bottom of the so-called ore chamber was of lime, and that the vein at the point of location had given out in a few feet (as it had done), he would have considered the mine utterly valueless for the purpose for which they examined it (p. 472); that he could not form any opinion without being affected by what Silva had told him, because there were certain matters that he had to take Silva's word for, not having any means of discovering these facts otherwise (p. 479). If he had not been informed by Silva as to what the bottom of the ore chamber was composed of, he would not have purchased or advised the purchase of the mine, not knowing what was in the bottom (p. 507).

It further appears from the testimony of Forman that it is usual to accept the statement of the owners of mines as to the extent of work and development, as it would often cost as much to clean out parts of the mine filled up and discover the facts shown by the original work as the mine would be worth (p. 507).

There is no evidence or circumstances to contradict the statements of Yerrington and Forman as to their belief in Silva's representations, and their reliance upon them. They must have relied upon Silva's statement that he had shown them all the work which had been done which would throw any light upon the extent of the ore bodies and their value; also his statement as to the bottom of the ore chamber being composed of ore, because they had no other available sources of information upon these points.

An effort was made by the testimony of the defendant to show that Yerrington was ready to purchase the mine for $10,000, and had made an offer for such purchase previous to his examination of the mine and before he had ever seen Silva. It is unnecessary to discuss this testimony, which is not only contradicted by the testimony of the plaintiff, but also by the fact that Yerrington did not purchase the mine until he had examined it, with Mr. Forman, making inquiries of Silva as to material facts, not ascertainable by such examination, and at the last moment, at Carson, before he would close the bargain or pay the purchase price, he required reassurance from Silva that he had shown him all the work which had been done in the mine. The evidence shows that it was only after the most careful personal examination, and after carefully questioning Silva as to all matters of which he could gain no knowledge otherwise, that he concluded to buy the mine. This, we submit, fully disposes of the effort to show that Yerrington paid $10,000 for the mine, or was willing to pay such sum on mere rumor.

Yerrington and Forman, being men of considerable experience in mining, examined the mine for themselves as far as it was open to inspection; but as to the condition of the mine in parts which were not open to view, and as to the work done therein, they relied implicitly upon the representations and statements of Silva. They did not question

these statements by making any examination as to their truth. So far as these statements were concerned, Silva knew that they were asked for and accepted as the truth. The fact that Forman and Yerrington were men of mining experience, or experts in mining, did not license the defendant to indulge in falsehood or deceit, or change the rule of law which permits the buyer to rely upon the representations of the vendor as to matters not known to him, and not open to his inspection, nor can the fact that the fraud was so skilfully planned and executed as to deceive and impose upon experts legalize or excuse it.

In view of the facts that this mere shell of ore in the so-called ore chamber was made to appear valuable; that the drill holes which demonstrated that the mine was worthless were so concealed that they were not discovered by Forman and Yerrington; that the mine in this condition was offered by its owner for sale as a valuable mine, and that he received $10,000 for it, it is not strange that Silva should plan the running of a drift from the bottom of winze No. 1 to intersect the body of ore which appeared to exist in the so-called ore chamber. It has been said by the opposing counsel that if Silva had made the drill-holes, or knew of their existence, and thus knew the ore body was without extension, that he would not have undertaken the work of getting underneath that ore body by driving the drift from the bottom of winze No. 1 on the 82-feet level. Silva would not have done this if he did not intent to sell his worthless mine for a large sum of money, but it is precisely what he would do if he did intend to make such sale. He would naturally desire that the purchaser of the mine should commence running the 82-feet level drift, and thus be delayed in discovering his fraud, rather than to commence work in the ore chamber and discover it immediately. Besides, Silva undoubtedly knew that the ore did not extend below the chamber, for he nowhere

denies the fact that he did the last work in the bottom of the ore chamber before the sale to the plaintiff, nor that this work showed that the ore body had no extension downwards, as the bottom was in the lime rock ; yet, counsel would have us believe that Silva expected this ore body to continue downwards, and for that reason commenced in good faith to run the 82 feet level drift to intersect it. The fact that Silva knew that the ore body did not extend downward makes it apparent that the plan of running the drift to intersect the ore body was only a part of Silva's plan to sell his worthless mine. It is quite in keeping with the drill holes and their concealment, and with the representations made by Silva as to the bottom of the ore chamber being solid ore, when he knew that such was not the fact.

It is true that Silva accepted of the plaintiff employment as foreman to run the proposed drift to intersect the ore body in depth, but he discharged himself from this employment before the drift was half run, and some time before his fraud was discovered.

The truth of this case is not to be determined by the consideration of any isolated fact or circumstance, but is best reached by considering the facts which are without dispute. These facts are, briefly stated: First. The mine, when examined by Yerrington and Forman, appeared to be valuable. Second. Its appearance was entirely deceitful, for the shell of ore had been pierced by drill-holes, which demonstrated that there was no ore-body. Third. These drill-holes were so concealed that they were not observed by Forman or Yerrington. Fourth. No one but Silva had ever had possession of the place where these drill-holes were made, and it is hard to conceive why they should have been, or how they could have been, made without Silva's knowledge; yet he offers no explanation of their existence, nor does he deny that he made them, or deny that he had knowledge of

their existence at the time Forman and Yerrington examined the mine.

In view of these facts, it is not difficult to get at the truth of the testimony wherever there is conflict.

Considerable stress was laid by the learned court below in its opinion upon the fact that plaintiff did not waive an answer under oath. We respectfully submit that the answer of the defendant is entirely overcome, as to every material issue, by the testimony of two credible witnesses, supported and corroborated by circumstances of the most convincing nature, and that, upon the merits, the decree appealed from should be reversed, with instructions to enter a decree for the plaintiff.

WM. M. STEWART,
A. T. BRITTON,
A. B. BROWNE,
Attys. for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1887. *No. 1210.*

The Southern Development Co. of Nevada,

Appellant,

vs.

Frank Silva.

FINAL BRIEF FOR APPELLANT.

WM. M. STEWART,
A. T. BRITTON,
A. B. BROWNE,
Attorneys for Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA, APPELLANT,

v.

FRANK SILVA, APPELLEE.

No. 1210.

Closing Argument on behalf of Appellant.

Counsel for appellee present to this court an elaborate argument to show that this case is within the jurisdiction of equity, because the remedy at law is not adequate or complete. The same counsel for appellee presented to the court below upon the hearing of this case, and upon the same record, a written argument to the effect that plaintiff's only remedy in this case was an action at law for damages.

In the light of this history, opposing counsel see fit to make critical comment upon the course of appellant's counsel in filing a petition for a rehearing in the court below, in which was raised, among other points, the question of jurisdiction. The reasons which induced this petition were to avoid the expense of an appeal to this court which would apparently (according to the late decision of this court in

the case of *Buzard* v. *Houston*) result in no decision upon the merits, but only in a reversal of the decree for want of jurisdiction. But as we have been compelled to take this appeal, we now prefer that this court should dispose of the case upon its merits.

We shall not take issue with the able and contradictory arguments made in this case by appellee's counsel upon the question of jurisdiction, but, because of their comment upon the course pursued by appellant's counsel, and as an answer to such comment, we feel justified in printing as an appendix hereto a copy of the written argument which appellee's counsel presented to the court below.

The question of jurisdiction, which was mooted by the learned judges of the court below in their opinion upon the hearing, will be decided by this court with reference solely to the merits of such question. The decision of this court will finally and conclusively determine this question of jurisdiction. It was not so in the Circuit Court. For that reason we do not urge here, as was urged in the court below for appellant, the objection to jurisdiction which had first been strenuously taken by the counsel for the appellee. Now that the case is before this court, we desire that it shall be disposed of upon the merits.

The Merits.

Our opening argument contains a full reply to all that is said in the argument of opposing counsel as to the representations made by Silva. In that argument we fully referred to the testimony concerning such representations. We will only add on this subject that this testimony can only be fairly considered in connection with the actual condition of the mine in question. The testimony establishes without dispute that the bottom of the ore chamber was composed

of lime rock and not of ore, also that the shell of ore which appeared upon the surface of the ore chamber at the time it was examined by Yerrington and Forman had been pierced by drill-holes which were concealed so that they were not discovered in this examination. These drill-holes passing through the dark-colored ore into the white lime rock behind it undoubtedly determined the extent and quantity of the ore. Now, it is established by the positive testimony of Yerrington and Forman that Silva represented that the bottom of the ore chamber was composed of ore (Yerrington, p. 324 and Forman, pp. 463, 483). Silva does not deny making this representation. On the contrary he says in his testimony that Yerrington and Forman asked him what he thought about the prospect of the ore in the bottom of the ore chamber, and that he told them he thought it would be very extensive (Silva, pp. 1362–3).

This representation is distinctly proven to be untrue, and there is no escaping the conclusion that Silva knew its untruth, because he excavated the ore chamber to the condition it was in when examined by Yerrington and Forman. Counsel for Silva seek to show that the bottom of the ore chamber could have been examined by Yerrington and Forman. We submit this point upon the references to the testimony made in our opening brief. Yerrington and Forman both testified positively to the fact that the bottom of the ore chamber was so covered with loose dirt and material that it could not be examined by them. There is no convincing testimony to the contrary.

Counsel for Silva evidently desire to overlook and obscure the fact of the drill-holes. There is no evidence, no circumstance, in the case, which in anywise conflicts with the testimony of plaintiff's witnesses concerning these drill-holes; that they were drilled through the shell of ore and into the lime rock behind, and that they were in existence when

Yerrington and Forman examined the mine cannot be doubted. In view of these facts, opposing counsel assert that there is no testimony to show that these holes were made by Silva or that he knew of them. By this we suppose they mean that we did not produce a witness who saw Silva in the act of drilling these holes, for the circumstances shown by the testimony point unerringly to the fact that Silva drilled these holes. No other person than Silva appears to have had any motive or interest to do this work. The only suggestion opposing counsel are able to make in explanation of these drill-holes is that it is barely possible that the witness Coffin may have made these holes while he was in charge of the work for the plaintiff. But this witness testified positively that these holes were not made by him or under his direction, and shows that they could not have been made without his knowledge (Coffin, pp. 538, 581, 590–1). The suggestion of opposing counsel that Coffin made these holes therefore imputes perjury to an unimpeached and credible witness, and ignores the fact that Silva did not in his testimony explicity say that he had not drilled these holes. On the contrary his testimony, as we have shown in our opening brief, amounts to a confession that he did drill these holes and knew of their existence.

The learned judges of the court below evidently misapprehended the testimony concerning these drill-holes. They evidently overlooked the fact that Silva was the man who first had access to the ore chamber, for the work done by him intersected this ore chamber. It was not possible therefore for any one to have drilled these holes before Silva's connection with the mine, yet in their opinion the judges of the court below remarked that others owned and worked the mine before as well as after Silva owned it, and that these holes may have been drilled before Silva's time, or even after his sale, by others (see opinion, pp. 226–7).

That no one could have drilled these holes before Silva's time is absolutely certain, and there is no fact or circumstance to support the suspicion that any one else drilled these holes after the work of Silva had discovered the ore chamber.

The learned judges of the court below also mistook the testimony as to the representation of Silva, that he had shown all the work that had been done in the mine (see opinion, pp. 224). The opinion refers to the testimony of Yerrington and of Silva upon this subject, and disposes of it with the observation that "this is simply statement against statement." The judges overlooked the fact that the testimony of Yerrington was fully corroborated by the testimony of the witness Forman (see p. 467).

The objection made under the third head of appellee's argument, that Yerrington did not rely on Silva's representations but on his own judgment, is fully refuted in our opening brief. It is clear from the testimony and circumstances of the case that Yerrington and Forman relied upon the statements of Silva that the bottom of the ore chamber was in ore, and that he had shown to them all the work which had been done in the mine which would throw any light on the quantity of ore therein. These matters were not open to the examination of Yerrington and Forman. They were material matters to be considered in the negotiation, and without satisfactory information upon these points the sale would not have been made. So testify Yerrington and Forman, and there is nothing to contradict this evidence. The fact that Yerrington and Forman, so far as they were able, made a thorough examination of the mine does not tend to show that they did not rely upon Silva's statements. It was natural that they should examine the mine as far as they could, and rely upon Silva's statements as to matters which they could not examine.

The rule of *caveat emptor* applies only when the buyer and seller have equal opportunities of knowledge, and when the defect complained of is patent and obvious to the senses, but it does not apply to a case like this where the seller makes express representations in respect to matters of which the buyer has no knowledge and no means at hand of obtaining knowledge.

Fishback v. *Miller*, 15 Nevada, 440.

In *Bigelow on Fraud*, it is said:

"Every contracting party not in actual fault has a right, "however, to rely upon the express statement of an exist- "ing fact, the truth of which is known to the contracting "party who made it, and unknown to the party to whom it "is made, when such statement is the basis of a mutual "engagement. He is under no obligation to investigate "and verify the statement, to the truth of which the other "party to the contract, with full means of knowledge, has "deliberately pledged his faith. Indeed, the law goes "further than this. It is well settled that a party may act "upon the express representation of another though the "means of information be fully open to him" (pp. 67–8).

In *Pomeroy's Equity Jurisprudence*, the law on this subject is stated as follows:

"Where a representation is made of facts which are, or "may be assumed to be, within the knowledge of the party "making it, the knowledge of the receiving party concern- "ing the real facts, which shall prevent his relying on and "being misled by it, must be clearly and conclusively es- "tablished by the evidence. The *mere existence of oppor- "tunities* for examination, or of sources of information, is "not sufficient, even though by means of these opportuni- "ties and sources, in the absence of any representation at "all, a constructive notice to the party would be inferred; "the doctrine of constructive notice does not apply where "there has been such a representation of fact. If one party,

" a vendor, for example, claims that the invalidating effects " of his misrepresentations are obviated, and that the pur- " chaser was not misled by them, either because they were " concerning patent defects in the subject-matter, or because " he was from the outset acquainted with the real facts, or " because he had made inquiry and had thereby ascertained " the truth, the foregoing qualification plainly applies; it is " plainly incumbent on the vendor to prove the alleged " knowledge of the purchaser by clear and positive evidence, " and not to leave it a matter of mere inference or implica- " tion; *an opportunity or means of obtaining the knowledge* " is not enough. The qualification applies no less plainly " to the case where the party receiving a representation has " given him an opportunity of examining into the real facts, " or where his attention is directed to the sources of infor- " mation. The mere opportunity or the means of investi- " gation are not sufficient (2 Pom. Eq. Jur., sec. 845, pp. " 381–2).

It is claimed that Silva must be innocent of any fraud, because he left $7,500 of the money paid for the mine in Wells, Fargo & Company's bank in Carson. This presupposes that Silva understood and believed that the plaintiff would be able to interfere with this money. He took with him a certificate of deposit and most probably believed that the money was secure in his possession. It was urged on behalf of Silva in the court below that plaintiff was not entitled to equitable relief, because Silva had sold and assigned this certificate to a stranger (see Appendix to this argument). Of course Silva new that the certificate of deposit was easily transferable, and his conduct in not withdrawing this money from the bank has no weight against the proof showing his fraud.

The claim that because Silva went to work for Yerrington, that therefore he must be innocent, is answered by the fact that he quit this work before they had drifted one-half of the distance necessary to discover his fraud.

The evidence introduced to show that Silva bore a good reputation has but little force against the direct testimony showing his fraud. If Silva had, prior to this transaction a good reputation for truth, honesty, and integrity, this would naturally cause Yerrington and Forman to place special confidence in his representations concerning the mine, and when these representations are shown to be false by convincing evidence the fact of his former good reputation becomes of no consequence.

The fact that Yerrington procured the arrest of Silva on a criminal charge is not at all surprising, when we consider the effect upon Yerrington of his discovery of the drill-holes, and that the bottom of the ore chamber was in lime rock. These facts, taken in connection with Silva's positive, representations, most naturally aroused the indignation of Yerrington.

It is next objected by opposing counsel that there was no valid rescission or offer to rescind by the plaintiff. The testimony shows the clear offer of Yerrington to return to Silva the property received from him upon condition that he pay to Yerrington the $10,000 received for the mine. But it is urged that Yerrington did not actually produce and tender a deed of the property conveyed by Silva. Upon this point Yerrington testifies as follows:

"Q. State whether you tendered him a deed, and whether "you offered to give him back the possession of the property "just as it stood then?—A. I did. Q. Of the entire prop- "erty?—A. Everything that we purchased of him. In ad- "dition to that I would give him all the improvements and "everything we had done there, which, at that time, I esti- "mated at $5,000" (pp. 359–60).

It thus appears that a deed was tendered, but the positive refusal on the part of Silva to accept a rescission, or to re-

turn the $10,000, rendered it unnecessary for the plaintiff to make strict legal tender of the deed. Such refusal made it really unnecessary for the plaintiff to offer to reconvey the property. Section 1691 of the Civil Code of California, in treating of the mode of effecting rescission, says that the party rescinding "must restore to the other party every-" thing of value he has received from him under the con-" tract, *or must offer to restore the same*, upon condition that " such party shall do likewise, *unless the latter is unable, or* " *positively refuses to do so.*"

The positive refusal of Silva to rescind the contract, or to restore the money received by him, was a complete waiver on his part of the offer to restore on the part of the plaintiff. Such offer would have been an idle act after Silva's positive refusal. But the testimony establishes that the plaintiff made a valid offer of rescission, and to restore what it had received from Silva. The fact that such offer was made before the commencement of the action is distinctly averred in the bill (p. 93). This allegation is not denied in the answer, and it was therefore unnecessary to produce more than one witness to sustain this allegation of the bill.

It is next objected that Yerrington did not offer to return to Silva the ore taken out of the mine, nor to pay him the value of it. Yerrington testified that he offered to restore to Silva everything that was purchased from him. This offer would include the ore. Even if it did not, it would be perfectly competent for the court, on a rescission of the contract, to require the plaintiff to make any compensation to the appellee which justice may require. Section 3408 of the Civil Code of California enacts this principle of law as follows:

" On adjudging the rescission of a contract the court may " require the party to whom such rescission is granted to

" make any compensation to the other which justice may " require."

The objection that plaintiff's proposition of rescission was made whilst Silva was under duress, menace, and undue influence is without any merit whatever. This objection seems absurd in the face of the fact that Silva positively refused to accept a rescission.

The claim that Yerrington's proposition of rescission was an offer to compound a felony is necessarily based upon the hypothesis that Silva had committed a crime. It seems trifling for counsel to make such an objection when the burden of their argument is to show that Silva acted in a straightforward and honest manner.

The objection that the rescission was not made until after suit was brought is based upon mere hypothesis and not upon the testimony. The bill was filed on May 8th; the offer to rescind was made on the same day. There is no direct testimony showing at what time of the day the complaint was filed. According to the testimony of Yerrington, which undertakes to narrate the facts in the order in which they occurred, it must be inferred that the bill was filed after the offer to rescind (see pp. 354–5).

The objection that the parties cannot be placed in *statu quo* is without merit. So far as the plaintiff removed ore from the mine, the value of such ore can be estimated from the testimony, and, if proper, compensation can be allowed Silva for such ore. The mine certainly suffered no greater damage or deterioration than the value of this ore. The quantity of ore taken out and sold after the plaintiff purchased was 36 tons, and it brought $3 per ton on the dump (testimony of Gorman, pp. 662). This would amount to an aggregate of $108. The extraction of this ore cost the plaintiff several thousand dollars, which cost and outlay was

attributed to and was incurred and induced by the fraud of defendant.

Opposing counsel say that the apparent value of the mine has been impaired by the work done by plaintiff and that Silva cannot he placed in *statu quo*. It is true that plaintiff broke the shell which concealed the fraud perpetrated by the appellee, by means of which he deceived the plaintiff, and has made it impossible for Silva to perpetrate the same deceit upon the next purchaser, but this ought not to deprive the plaintiff of its right to rescind the contract and recover from Silva the money paid him.

Another objection is that plaintiff cannot give Silva a good title to the property received from him. There is no showing that the plaintiff is not able to reconvey all the property in question to Silva by as good title as he conveyed to the plaintiff. There has been no forfeiture or relocation of any of this property except the Sterling Mine, which was relocated by one John Wilson, and the plaintiff produced and put in evidence a deed conveying all of Wilson's rights under his relocation.

The appellant was not bound to perform the annual assessment work upon the mining claims required by the United States mining law after it had tendered a conveyance and delivery of possession to Silva. If he desired to preserve these claims he could do so, but he had no right to inflict the further injury upon plaintiff of compelling it to expend $100 per annum to preserve these mining titles for Silva.

In *Neblett* v. *Macfarland* (92 U. S., 101) this court said:

" It is no objection to a restoration of property received " on a fraudulent sale that it has fallen in value since the " date of the transaction. (Blake *v.* Morrell, 21 Beav., 613; " Veazie *v.* Williams, 8 How., 134, 158). Nor, if the prop-

" erty is of a perishable nature, is the holder bound to keep " it in a state of preservation until the bill is filed. (Scott " *v.* Perrin, 4 Bibb, 360; Kerr, 337).

" A party seeking to set aside a sale of shares is not " bound to pay calls on them to prevent forfeiture after " filing his bill; nor is it fatal to his right of rescission that " some of the shares have been thus perfected. * * * " If the bond has become thus impaired [by a possible de- " fence of the statute of limitations] it is no worse than the " loss of a perishable article, or the forfeiture of shares " during the litigation. These circumstances do not alter " the rule of law. * * *

" Parties engaged in a fraudulent attempt to obtain a " neighbor's property are not the objects of the special so- " licitude of the courts. If they are caught in their own " toils and are themselves the sufferers, it is a legitimate " consequence of their violation of the rules of law and " morality. Those who violate these laws must suffer the " penalty " (92 U. S., 104–5).

In *Kerr on Fraud and Mistake*, p. 337, it is said:

" Nor is a man, if the property is of a perishable nature, " bound to keep it in a state of preservation until bill filed. " His only duty is to do nothing with the property, after " the bill, and in cases where damages are likely to occur, and " might be prevented, he ought, perhaps, to give intimation " to the defendant, leaving him to do what he pleased. A " party seeking to set aside a sale of shares is not bound " to pay calls on them to prevent forfeiture after filing the " bill. It is not fatal to his right of rescission that some " of the shares may have been forfeited for non-payment " of calls since bill filed."

The original complaint was filed in the State court on May 8th, 1884. The forfeiture claimed by counsel for Silva took place in January, 1885. The defendant was bound to know the law in respect to annual assessments and the consequences of a failure to perform them; and it was

not necessary for plaintiff to give defendant any notice as to the necessity of doing such work or the consequences of a failure to comply with the law.

It is unnecessary for us to make any further or special reply to the matter contained in appellee's argument under the head of "Yerrington's misrepresentations." These charges consist of flimsy hypercriticisms without any basis or substance, and have been fully disposed of in our argument on the merits.

Respectfully submitted.

WM. M. STEWART,
A. T. BRITTON,
A. B. BROWNE,
Counsel for Appellant.

APPENDIX "A."

Argument for Appellee in court below upon question of jurisdiction.

COMPLAINANT'S ONLY REMEDY IS AN ACTION AT LAW FOR DAMAGES.

The only redress complainant can hope to recover, whether at law or in equity, is the $10,000 paid for the mine, and the $5,000 expended on the mine. The prayer of the bill is that Silva be decreed to restore to complainant all that he received under said contract, that is the ten thousand dollars. For this relief there is a plain, adequate, and complete remedy at law.

That equity has concurrent jurisdiction with courts of law in all cases of fraud (barring of course the exception as to wills), is no longer true in America. The jealously of English Courts of Chancery has to a large extent retained that relic of ancient law, but in America, where the right of trial by jury is guarded with equally as much jealousy, this old doctrine is exploded. It is fully discussed by Prof. Pomeroy at section 914, vol. 11, of his work.

In *Huff* v. *Ripley* (58 Ga., 14), it is stated that in cases of fraud where a defrauded party can obtain in a court of law as full and adequate relief as in a court of equity, the latter court has no jurisdiction.

So, too, in *Piscataqua F. & M. Ins. Co.* v. *Hill* (60 Me., 178) it is said: "When compensation in damages is the only "relief that can be given in case of an alleged fraud, the "court has no jurisdiction in equity."

And equally strong is the case of *Woodman* v. *Freeman* (25 Me., 531.)

In Massachusetts the same rule obtains. Thus in *Jones* v. *Newhall* (115 Mass, 247) which was an action for specific performance by a vendor, where the vendee refused to pay the purchase price, it was held that equity had no jurisdiction, because the only relief plaintiff was entitled to was payment of purchase price, for which there was a remedy at law. Says the court at page 247: "If the only relief to "which plaintiff would be entitled in equity is the same in "measure and kind as that which he might obtain in a "suit at law, he can have no standing upon the equity side "of the court, unless his remedy at law is doubtful, circuitous or complicated by multiplicity of parties having "different interests."

And also at page 247: "He may recover at law the full "amount of the installment due. In equity he can have no "relief beyond that. He cannot come into equity to obtain "precisely what he can have at law."

The court then cites a large number of cases, and adds: "The plaintiff has no occasion for an order of court in regard to performance by himself. At most, all that is "necessary for him to do, in order to recover his judgment "at law, is to offer a conveyance," &c.

The same views are maintained in—

Ward *v.* Peck, 114 Mass., 509.

Suter *v.* Mathews, 115 Mass., 253.

This is likewise the rule of law in the United States courts, based on the provisions of section 723, Desty's Fed. Pro., which says: "Suits in equity shall not be sustained in "either of the courts in any case where a plain, adequate,

" and complete remedy may be had at law." This section has been frequently construed. Thus Mr. Justice Clifford, in the case of *Insurance Co.* v. *Baily*, (13 Wall., 621), after discussing this question of concurrent jurisdiction in cases of fraud, states as the result of all the authorities: "That " whenever a court of law in such a case is competent to take " cognizance of a right, and had power to proceed to a judg- " ment, which affords a plain, adequate, and complete rem- " edy, without the aid of a court of equity, the plaintiff " must, in general, proceed at law, because the defendant, " under such circumstances, has a right to trial by jury."

And to the same effect are the following:
Oelrich *v.* Spain, 15 Wal., 228.
Grand Chute *v.* Winegar, 15 *Ib.*, 375.
Ambler *v.* Choteau, 107 Mass., 531.
Ferson *v.* Sanger, Davies, 252.
Newham *v.* May, 13 Price, 752.
Frue *v.* Loring, 120 Mass., 517.

The very recent case of *Lautz* v. *Gordon* (28 Fed. Rep., 264,) decided July, 1886, by Judge Wallace, of the Northern District of New York, is in point.

That was an action for specific performance. Defendant set up in a cross-bill that he was induced to enter into the agreement by fraudulent misrepresentations, whereby he had been damaged, and prayed that the contract be adjudged fraudulent, and he recover the damages suffered. A demurrer to this cross-bill was sustained, and the court said:

" Treating the cross-bill as an original bill, a court of " equity would refuse to exercise jurisdiction, because the " complainants have a full, adequate, and complete remedy " at law. * * * The general proposition that equity " has always jurisdiction of fraud, misrepresentation, and " concealment is a familiar one; but the exercise of the " jurisdiction is refused where the remedy at law is in all " respects as satisfactory as the relief which could be fur- " nished by a Court of equity."

Applying these principles to the case at bar, it will be readily seen that equity has no jurisdiction. All that com-

plainant could hope to recover would be a judgment for $15,000. For this, its remedy at law is plain; because it has been said ever since the time of *Pasley* v. *Freeman* (3 term, R. 51), that an action at law will lie for damages caused by fraudulent misrepresentations. The remedy at law is adequate, for it cannot only recover a judgment for $10,000, but also for the $5,000 expended on the mine (Ahrens *v.* Adler, 33 Cal., 608), and that is the whole of the relief that could be obtained in equity. The remedy at law is likewise complete, for the relief in the one forum is not different from that in the other. If it be urged that equity could compel the return of the certificate, whereas a court of law could not, we reply: (1) There is no prayer for the return of the certificate, nor does counsel claim such relief in his brief. (2) It does not appear from the evidence that Silva has the certificate, and as a matter of fact he has not, having sold and assigned it to a stranger, which is well known to your honor, as a suit has been brought in this court on said certificate. (3) There is no allegation that Silva is insolvent, and that unless complainant gets the certificate it will not be able to satisfy a judgment against Silva.

Therefore, we claim that the relief sought by complainant is identically the relief which would be asked in a court of law, viz., a demand for $15,000. Having already tendered Silva a deed and rescinded the sale (according to its testimony), it can at any time maintain an action at law for damages, and there is no necessity for going into equity. As was said *supra*, *Jones* v. *Newhall* (115 Mass., 247): "The plaintiff has no occasion for an order of the court in "regard to performance by himself. At most, all that is "necessary for him to do in order to recover his judgment "at law is to offer a conveyance," &c.

125-247

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1887.

No. 1210.

SOUTHERN DEVELOPMENT COMPANY OF NEVADA,
Appellant,

v.

FRANK SILVA,
Appellee.

ARGUMENT on BEHALF of APPELLEE.

—BY—

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IN THE

Supreme Court

OF THE

UNITED STATES.

OCTOBER TERM, 1887.

No. 1210.

THE SOUTHERN DEVELOPMENT COMPANY OF NEVADA,
Appellant,

vs.

FRANK SILVA,
Appellee.

Argument on Behalf of Appellee.

I.

The Appellant's Brief is not in the form prescribed by the Rules of this Court, and for that reason cannot be considered.

Rule 21 of this Court provides that the Brief for Appellant *shall contain certain things in the order there stated,* among which are "a concise "statement of the case presenting succinctly the "questions involved and the manner in which

"they are presented, the errors assigned and a "specification of errors."

In the "Opening Argument for Appellant," we do not find "a concise statement of the case, pre- "senting succinctly the questions involved and "the manner in which they are raised." It is true we find a purported statement of the case (though the same is defective and wholly unsatisfactory), but there is no pretense that such statement presents succinctly or otherwise "the ques- "tions involved and the manner in which they are "raised."

Nor are there any "errors assigned," nor is there any "specification of the errors relied upon," nor is there any specification of errors stating, "as particularly as may be, in what the decree is "alleged to be erroneous." Counsel for appellant has thrown upon this Court the burden of wading through a record of *seven hundred and eighty-seven* (787) printed pages, in order to ascertain what are the errors on which he relies for a reversal of the decree. The errors discussed in his Brief might have arisen from the improper admission or rejection of testimony, or from the insufficiency of the evidence, or from erroneous rulings of the trial Court, either on questions of fact or law, or from any of the other numerous causes which may be assigned as error on an appeal in an equity case. Appellant's brief being wholly informal and not complying with the Rules of this

Court, we ask that it be disregarded, and pray that the decree appealed from be affirmed.

We are not, however, afraid to meet appellant's argument on the merits, and we shall now consider the same; but inasmuch as his statement of the facts is not complete, we shall present what we conceive to be a full and fair

STATEMENT OF THE CASE.

The facts on which this case was tried are these: On February 15, 1884, the appellee sold to appellant certain mining property in the county of Inyo, comprising the "Sterling Mine," "Vasco Mine," "Sterling Mine No. 2," and several springs of water, about one and a half miles distant, known as the "Sterling Springs," and "Harbin Springs," together with five acres of land adjacent to the said Harbin Springs (Record 150–161). H. M. Yerington, President of the Southern Development Co., acted on behalf of appellant in making the trade. The purchase price was $10,000, paid by cheque. This was paid to Silva by Yerington at Carson City, Nevada, on February 15, 1884.

Silva deposited the cheque with the Banking house of Wells, Fargo & Co., at Carson City to his credit, receiving in exchange therefore $2500 in cash and a certificate of deposit for $7500. The Development Company then went to work operating the Sterling Mine. Silva was employed

therein as a foreman to direct the work. After the mine had been worked for two months and about 50 tons of valuable silver ore taken out, Yerington claimed that the mine was worthless, that there were no more than the 100 tons of ore in it, and that Silva had practised a fraud upon him in the sale. The basis of the fraud is alleged to be certain representations as to the value of the mine and the amount of ore therein, claimed to have been made by Silva prior to the sale. Yerington immediately filed a complaint in the Superior Court of Inyo county against Silva, asking to have the sale rescinded, and on the same day caused Silva to be arrested on a criminal charge. On the trial of the criminal case, the jury failed to convict and Silva was discharged. In the civil case, which was commenced on May 8, 1884, an injunction was applied for to prevent the negotiation of the certificate of deposit above referred to, but the application was denied (Record 14–22*). Thereafter the action was removed to the Circuit Court of United States for the District of California at the instance of complainant (Record 22–34). After two demurrers were sustained, the present "second amended bill of complaint" was filed. An answer having been filed by defendants and a replication by complainant, issue was joined. Testimony was then taken, and the case having been heard, a decree was rendered on the

* These references are to the marginal pages.

14th day of August, 1887, dismissing the action on the merits. The opinion of the Court rendered thereon appears in the back of this brief as "Appendix A." Complainant then moved for a rehearing (Record 229), but the same was denied by the Circuit Judge and Judge Sabin, of the Nevada District, sitting with him on Aug. 8, 1887 (Record 259). The opinion rendered thereon is annexed to this brief and marked "Appendix "B." Complainant now prosecutes an appeal to this Court praying a reversal of the decree.

REPLY TO APPELLANT'S ARGUMENT.

Two points are made by appellant on which he relies for a reversal, viz.: 1. Want of jurisdiction; 2nd. The existence of such fraud on the part of Silva in selling the mine as invalidates the sale and entitles complainant to a rescission. These points we shall consider seriatim.

I.

It is urged that a Court of Equity has no jurisdiction of the cause of action stated in the bill, because there is a plain, adequate and complete remedy at law.

In other words, a complainant files a bill in equity against his opponent, takes testimony, goes to trial, and being defeated on the merits, he

claims, after a decree is made, that the Court never had jurisdiction to entertain the suit, and thereupon brings the decree to this Court, praying a reversal on that ground. Without stopping to comment on this most unjust proposition at this time, let us inquire into its merits.

The Development Company paid for the mine by a cheque for $10,000. The president of the Company then went with Silva to the bank of Wells, Fargo & Co., where he (Silva) deposited the cheque, and received in exchange a certificate of deposit for $7500 and $2500 in coin. This certificate of deposit has never been paid to Silva. He has never received that money, and the primary object of this suit is to get back that certificate. The Development Company, immediately after giving the cheque, employed a gang of men and commenced working the mine actively. They claim to have spent $5000 in making improvements and developing it. A large quantity of ore was extracted and sold. Indeed they claim to have taken out all the ore in it. The mine has been completely gutted, and the basis of their suit is that there is no more ore in it. Thereupon they file a bill in equity, asking a rescission of the contract, a very ordinary and well settled doctrine of Equity Jurisprudence, and that both parties be placed in *statu quo*, that is to say—that Silva be compelled to receive back a conveyance of the mine (which they tender) and to deliver up the

certificate of deposit, and the additional $2500 in money (portion of the purchase price) and to pay such damages as they may have suffered by reason of their work on and development of the mine, alleged to be $5000.

Does this state any ground of Equitable jurisdiction? We think it does.

1. The bill is good as a bill of discovery.

The bill being sworn to, and calling for an answer under oath, it is in effect a bill of discovery. This is certainly a ground for Equity jurisdiction. Said the learned Judge of the Court below, in passing upon this point on the petition for a rehearing: "So, also, as an answer on oath "was not waived, the defendant was called upon "to answer under oath, and in that aspect of the "case it was substantially a bill of discovery. "The answer to the material allegations of the "bill, denying them, not only formed an issue, but "it was evidence in the case called out by plaintiff. "The complainant was entitled under the equity "practice to obtain his evidence in that way, how-"ever inconvenient at this day it may be." (Record, p. 255.)

2. The bill presents a proper case for an accounting.

There can be no question, that, if complainant had won the suit, the parties would have to be placed *in statu quo*. Such is the natural conse-

quence of a decree for complainant in an action for rescission. In such event there would be off-sets on each side, and an accounting would be necessary to adjust them. In the first place, Silva would have to return the certificate of deposit for $7500 and make up the deficit of $2500 in money, balance of the purchase price; and the Development Company would have to reconvey to him everything it received under the contract; that is, the Sterling Mine, the other mines known as the Extensions of the Sterling, the springs of water, and land received from him by the Company. But this is not all. The Company claims to have spent $5000 in developing the mine, and desires to recover that also. On the other hand, they have taken out all the ore in the mine and sold it. Undoubtedly they would have to account to Silva for that ore, it being "something of value" received by them under the contract sought to be rescinded. Nor would such accounting be all that would be required of them. The mine having been gutted by the Company after the purchase, it is in a very different condition from what it was when they received it from Silva. Since it would be an impossibility to restore it in the same condition in which it was when they received it, in order to do complete justice to both parties, it would be necessary for the Court to calculate the damage done to the mine by taking out the ore, and such amount of damage would be an offset in

Silva's favor, the depreciation in the present value of the mine caused by the removal of ore, being an offset to its increased value (if any) caused by the $5000 worth of improvements. To determine these questions, an accounting in Equity would be necessary. A Court of law would be impotent in the premises. In disposing of this question, the Circuit Court said: "There was a question raised "as to whether the parties could be placed *in statu* "*quo*, the complainant having worked the claim for "some time and taken out the metal, so far as any "was found, and there was some rich ore in sight, "or the purchase would not have been made. At "least so says the bill. This would seem to present "a case for an accounting as to the cost of working "the mine and the amount of the precious metal "yielded."

3. Again; a portion of the relief sought is to get back the certificate of deposit for $7500, on the ground that Silva holds it as an involuntary trustee; and when the suit was commenced plaintiff asked for an injunction against Silva to prevent him from disposing of it.

The contention of complainant in this regard was, that Silva, having gotten the money by fraud, acquired no title, but became an involuntary trustee thereof for complainant; and when he converted it into another form, viz.: a certificate of deposit, the trust still clung to it and he held the certificate as he did the money—in trust for complainant. This is good law. Whenever money

is held in trust and is wrongfully converted into any other species of property, the property into which it is converted is likewise held in trust, and the arms of equity are always long enough to reach it. If a person holding money in trust, wrongfully purchases land with it, taking the conveyance in his own name, there is no question that the *cestui que trust* can in equity compel a conveyance of the land. If the trustee converts the money into promissory notes, stocks, bonds, or certificates of deposit, there is no reason why the same rule should not obtain.

A mere casual examination of some of the cases will substantiate our position. The leading case on the subject is that of *Knatchbull v. Hallett* (L. R. 13 Ch. Div. 696), decided by the Court of Appeal in England in 1879. It is an able and learned exposition of the growth of the doctrine that equity will pursue money, which is once impressed with a trust, even when commingled, and award it to the true owner. The judgment is based on the theory that Lord Eldon's famous dictum, that "money has no ear-marks" and cannot be followed, is no longer sound doctrine and will not be tolerated in equity. In that case certain bonds had been deposited with a bailee for safe-keeping and he had sold the same, converted them into money and deposited the money, together with his individual funds, in bank to his own credit. It was held that equity could and would follow

the fund, it being of no moment into how many different forms the subject matter of the original trust had been converted, nor through what shapes it had been made to pass.

When similar questions came before this Court, they were decided precisely as they had been by the English Court of Chancery, and the *Knatchbull* case was affirmed.

See *National Bank v. Insurance Co.* (104 U. S. 54).

Said the Court in that case, speaking of the relationship between a bank and its depositor: "If "the money deposited belonged to a third person, "and was held by the depositor in a fiduciary ca- "pacity, its character is not changed by being "placed to his credit in his bank account."

See also—

Newton v. Porter (69 N. Y. 133).
Taylor v. Palmer (3 M. & S. 562).
Bank of America v. Pollack (4 Edw. Ch. 215).
Barry v. Brune (8 Hun. 395).
Silsbury v. McCoon (3 Coms. 379).
Thompson v. Perkins (3 Mason, 232).
Pennell v. Deffell (4 De G. M. & G. 372).
Fritz v. Cartland (2 Hem. & M. 417).
Stephens v. Board of Ed. (79 N. Y. 183).
The Matter of LeBlanc (14 Hun. 8).
Wells, Fargo v. Robinson (13 Cal. 133).

George v. Ransom (14 Cal. 660).
Bayles v. Baxter (22 Cal. 578).
Simpson v. Eckstein (22 Cal. 593).
Greiner v. Greiner (58 Cal. 122).

The bill in this case is framed with a view to bringing the case within this equitable doctrine. Silva's alleged fraud in getting the $10,000, and the final conversion of a portion of it into a certificate of deposit are set forth in the bill for the sole purpose of having it adjudged that Silva holds said certificate as an involuntary trustee; and that this is a matter of equitable cognizance can not be doubted. The above cited cases fully sustain the contention.

It matters not that a portion of the relief sought could be obtained in a Court of law, such for instance, as the assessment of damages. Where a Court of Equity has jurisdiction for any purpose whatever, it may retain the cause for all purposes, and proceed to a final determination of all the matters in issue, even though some of them be matters cognizable in a Court of law.

In such case a litigant will not be relegated to a Court of law. Equity does nothing by piecemeal. Says Pomeroy (1st Jur. Eq. §187): "For this "reason, if the controversy contains any equitable "feature, or requires any purely equitable relief, "which would belong to the exclusive jurisdiction, "or involves any matter pertaining to the concur- "rent jurisdiction, by means of which a Court of

"equity would acquire, as it were, a partial cogni-
"zance of it, the Court may go on to a complete
"adjudication, and may thus establish purely legal
"rights and grant legal remedies which would
"otherwise be beyond the scope of its authority."

So here, equity having jurisdiction to compel a transfer of the certificate, will retain jurisdiction for all purposes.

It must be remembered, that, unless the Court is absolutely without jurisdiction under every aspect of the case, the contention of appellant must fail. The case must be entirely bald of equity. It was very aptly said by the judges of the lower Court (Record, p. 253): "The complainant's pe-
"tition for a rehearing on this ground is entitled
"to no consideration, unless the Court is absolute-
"ly without jurisdiction," and this we understand to be well settled law. The Court must be plainly without jurisdiction. Want of jurisdiction must be manifest on its face. There must be no doubt about it, for to doubt is to uphold the jurisdiction. Especially should that be the rule here, for complainant selected its own forum. It dragged us into a Court of Equity against our will. We objected to it again and again without avail, both on demurrer and final hearing. We have been compelled to traverse two States to take testimony, in distant localities and at vast expense. The voluminous record before this Court speaks for itself in that regard.

The litigation has now lasted nearly four years, and it is only at this late day, after an overwhelming defeat on the merits, that the complainant claims to have discovered that the Court never had jurisdiction of its suit. And for what purpose is this point now raised? It is solely to prevent the decree in this case from operating as bar to further litigation on the same questions of fact in other cases now pending between the parties. They desire to retry these same issues in a Court of law, hoping to be more successful before a jury than they were before the learned judges who tried this case and rendered the decree appealed from.

The appeal is wholly without merit, so far as the jurisdictional question is concerned. No better argument can be made on our side than that made by the opinion of the learned Judges of the lower Court rendered on petition for rehearing, and we have appended it to this brief, marked, "Appendix B."

II.

The alleged fraudulent representations claimed to been committed by Silva.

Counsel has not arranged and set forth these alleged fraudulent representations in such order that they may be readily ascertained; and we have expended considerable labor and no little ingenuity to gather them together out of the large

mass of loose matter contained in appellant's brief, and place them before the Court in clear and succinct language. But so far as we are able to discover, the only fraudulent representations complained of or discussed in Appellant's Brief are these:

1. That Silva represented to Yerington and Forman that he had shown them all the work which had been done in the mine that would throw any light on the quantity of ore therein.

2. That the bottom of the ore-chamber was solid ore, as good as the ore exposed on the sides of the chamber.

3. That there were not less than 500 tons of ore in his judgment in and about the ore-chamber.

4. That there were 2000 tons of ore in the mine.

5. That the mine was worth $15,000.

It will be seen from this that the fraudulent representations complained of in the brief are quite different, in many essential particulars, from those charged in the bill; and also, that several fraudulent representations, charged in the bill, have been wholly omitted from the brief. These latter we will note further on, and address ourselves now solely to to those charged in the brief.

Says Mr. Pomeroy (2 Pom. Eq. Jur. § 876): "A misrepresentation in order to consitute fraud, "must contain the following elements: (1) Its form "as a statement of fact; (2) Its purpose of induc-

"ing the other party to act; (3) Its untruth; (4) "The knowledge or belief of the party making it; "(5) The belief, trust or reliance of the party to "whom it is made; (6) Its materiality."

Complainant must show that *all* of the above requirements were present in Silva's alleged representations. Otherwise they are not deemed fraudulent in equity. The burden of proof is on complainant, and this proof must be *clear and satisfactory.* A mere preponderance of evidence is not sufficient. "Fraud is odious, and never to be "presumed," says Lord Coke; and such iniquity cannot be fastened on a person, except where the proof is clear and convincing.

Atwood v. Small (6 Clk. & Fin. 232).
Tuck v. Downing (7 Mor. Min. R. 108–10).
Walker v. Hough (59 Ill. 375).
Dirkson v. Knox (30 N. W. Rep. 49).

Now, let us test the case in hand by these requirements, commencing with the second alleged misrepresentation, for convenience sake, and postponing the first till the last.

Representation No. 2.

That the bottom of the ore chamber was solid ore, and as good as the ore on the sides of the chamber.

By referring to the maps appearing in the record at pages 142 and 196, the Court can form an

intelligent idea of this ore chamber. In developing the mine, a tunnel had first been dug, called the "Sterling Tunnel," colored purple on appellant's map. After advancing into the hill 186 feet, a turntable was formed, and there two drifts were driven; one to the west, and one to the east. The easterly drift, colored purple on the appellant's map, advanced fifty-nine feet. At that point, a winze, known as Winze No. 1, was sunk eighty-four feet. It is colored green on appellant's map. At the depth of thirty-nine feet, a level was run, known as the 38 foot level, colored red on appellant's map. Some ore was found here at a point called the "Modoc Hole," shown on the appellee's map, but not shown on the appellant's map. This ore did not amount to much, and hence, Silva went back to the easterly cross drift above referred to, and drove it twenty-eight feet further down an incline, at which point he sunk another winze called "Winze No. 2." In sinking this winze, he struck an ore body at a point opposite the thirty-eight foot level. It was irregular in shape, but in general features longitudinal, dipping at an angle of forty-five degrees. The winze cut it at the apex, where the ore body commenced at a point, comparatively speaking, and increased gradually as it descended, in the form of a wedge; or, as Yerington says, a pyramid. At its base it measured four or five feet across. Its length from apex to base was nine feet. The sur-

face of this inclined pyramid formed the floor or bottom of the chamber, but there was a small space between the base and the opposite foot-wall, called the bottom of the chamber by appellant's witnesses, and is the bottom spoken of in the bill. In the S. E. corner a small shaft had been sunk to the depth of two feet. The ore was carbonate, and being friable, a portion of it had slacked down by natural causes, over the face of the pyramid to the so called bottom, partially covering it to the extent of a foot or so, and partially filling the little shaft in the S. E. corner. Yerington says it had rolled down like wheat. (Record, pp. 323–324.)

The dispute is as to Silva's statements concerning the character of rock under this loose matter. Yerington and Forman testified that Silva said it was solid ore. The bill alleges that Silva said it was *ore*, not *solid ore*. This is positively denied in the answer. Silva also denies it in his testimony, and says he was merely asked his opinion as to the extent of the ore body, and he replied that he thought it would be extensive. It is for the Court to determine which of these two statements is true, and we can offer good reasons for disbelieving Yerington. He swears in the bill that Silva had discovered the fact that the bottom was not composed of ore, and afterwards had covered the bottom of said chamber with ore, vein rock, and matter. In other words, he had *salted*

the mine. There is not a particle of evidence to prove this. It furthermore appears, that on account of the dry character of the ore, it being carbonate, it had slacked down from above by natural causes in fine particles like wheat.

Yerington's Testimony, p. 324.
Forman's Testimony, p. 487.
Eddy's Testimony, pp. 1174–1177.

Yerington having sworn falsely in one point regarding this matter, is to be distrusted in others. *Falsus in uno, falsus in omnibus.*

Again, Yerington testifies that the little shaft in the S. E. corner was filled and covered up with waste, and could not be seen. (Record, pp. 401–2.)

Both Silva and Eddy testified positively that this little shaft was not covered, that it was plainly visible, and Yerington and Forman stood in it and took samples therefrom.

Eddy's Testimony, pp. 1166, 1174–5–6.
Silva's Testimony, pp. 1361–2–3–4–5.

Here, again, Mr. Yerington is convicted of a falsehood, and on a most material point. It is not at all probable that Silva should have made the statement charged, but it is highly probable that he did make the remark he testified to, viz., that he thought the ore body was extensive. Who can make any positive assertion as to the extent of an underground, undeveloped ore body?

Yerington and Forman were just as competent to judge on that point as Silva, and they were the last persons in the world to take the statements of an interested stranger as to the continuity of the undeveloped ore bodies. It is a point on which nothing but an opinion can be given by any one. Besides, Yerington had the means of discovering the nature of the bottom, if he had chosen to exercise it. The depth of the slacked ore was from one to two feet. It was loose and easily removable. Eddy went to the surface and got a pick to be used in taking samples (Record, pp. 1164–5), and Foreman did rake through the loose ore with the pick. They were in that ore chamber over an hour examining it. Hence, it would have been an easy matter to have removed the loose ore at one point, and hereby uncovered the bottom and discovered the lime. It was Yerington's folly to rely on the alleged statement without investigation, when he had the means of investigation within his power. The rule of *caveat emptor* applies. Says Story in Volume 1 of his Equity Jurisprudence, Section 200a (quoted in Tuck v. Downing, 7 Mor. Min. Rep., 108):

"If the purchaser, choosing to judge for him-
"self, does not avail himself of the knowledge, or
"means of knowledge open to him or his agents,
"he cannot be heard to say that he was deceived
"by the vendor's misrepresentations, for the rule

"is *caveat emptor*. Courts of Equity do not sit "for the purpose of relieving parties under or- "dinary circumstances, who refuse to exercise a "reasonable diligence or discretion. * * * "However reprehensible in morals are gross exag- "gerations or departures from truth, they are, "nevertheless, not treated as frauds which will "avoid contracts. In such cases, the other party "is bound, and indeed, is understood, to exercise "his own judgment, if the matter is equally open "to the observation, examination, and skill of "both."

The recent case of *Reynolds v. Palmer* (21 Fed. Rep. 434), is in point. Defendant owned raw tobacco, which was hanging in his barn in tiers or layers from the ground upward to the top of the barn, as is usual in curing tobacco. Plaintiff examined the lower tiers of tobacco, and they appeared good. He did not examine the upper tiers, because it was difficult to get to the top of the barn. Defendant represented that the top layers were as good as the lower. As a fact the top layers were frost-bitten, and hence worthless. Said the Court:

"The evidence upon both sides shows that the "plaintiff visited the barn before the sale, saw the "tobacco, and with some little inconvenience could "have made a full examination, and no obstruc- "tions were placed in his way, and no objections "were made by the agent of the defendant." It

was held, that plaintiff's damage was the result of his own folly, and he could have no belief.

So in our case, there is no pretense that Silva ever objected to a thorough examination or ever placed any obstructions in the way thereto. On the contrary, he made a full exhibition of the entire mine, and even procured a pick so that Yerington and Forman could make a full and complete examination.

We claim that the evidence and all the circumstances show that Silva merely gave his opinion as to the probable extent of the ore body. He thought it would be extensive. This was nothing more than the expression of an opinion, and in such there is no fraud. (2nd Pom. Eq. Jur., Sec. 878.)

So much for the first portion of Representation No. 2, which refers to the bottom of the ore chamber being composed of solid ore.

Now, let us consider the remainder of the representation, viz., that the ore in the bottom was as good as that on the sides.

On the first day of Yerington's deposition, after testifying that Silva said the bottom of the ore chamber was composed of solid ore, we find the following testimony:

"Ques. State whether there was any compari-
"son made as to the quality of the ore between
"the ore on the sides of the chamber and the ore
"that was said to exist in the bottom beneath
"the loose stuff.

"A. I do not think so.

"Ques. State whether Mr. Silva said at any "time during the conversation there that the bot- "tom was composed of the same kind of ore that "was found on the sides of the ore chamber.

"A. I do not remember that."

Soon after this, the deposition was adjourned until the next day. Mr. Yerington sleeps over the matter, and having, doubtless, seen the fatal effect of the testimony given by him on the previous day, and hereinabove quoted, testifies as follows on the next day:

"Ques. Mr. Yerington, will you be kind "enough to state again what was said when you "were in the ore chamber, as to the bottom of "that chamber, as to what it was composed of?

"A. Since yesterday I have refreshed my "memory about that business, and I had the "means of doing it. I am now positive that Mr. "Forman said to him, 'Silva, this floor here is "'covered with ore to quite a depth. Mining "'men under those circumstances would be a little "'suspicious as to what is below. I want you to "'tell me what is the character of this floor so "'that I will understand it.'

"He told him it was ore, and he said 'It is good "'ore, and as good as you will see here (referring "'to the sides), if not better.'" (Record, 324, 361–2.)

The witness fails to state what were the means by which his memory had become so remarkably

refreshed during the intervening night, but, to say the least, it seems to us a little suspicious. Such testimony is not reliable, especially from an interested witness. The proof is not *clear;* it is not *satisfactory.* Silva says that there never was a word said about that. "They asked me what I "thought of the ore body, and I said, I thought it "would be extensive. I thought so at the time "and think so yet." (Record, pp. 1362–3–4.)

We will leave this portion of the case by quoting from the opinion of the lower Court, rendered on the final hearing: "As to Representations "No. 2 and 2a, the allegations of the bill are that "he falsely and fraudulently said, 'That the bot- "'tom of said chamber was composed of ore of the "'same kind, etc.' These allegations are categor- "ically denied in the sworn answer. Yerington "testified that Forman said to Silva, 'Now, Silva, "'under this ore (ore that had crumbled and fallen "'down on the floor), is this floor solid ore?' and "he said 'yes.'

"'State whether there was any comparison made "'as to the quality of the ore between the ore on "'the sides of the chamber, and the ore that was "'said to exist on the bottom beneath the loose "'stuff.

"'A. I don't think so.

"'Q. State whether Silva said at any time "'during the conversation there that the bottom "'was composed of the same kind of ore that was "'found on the sides of the ore chamber.

"'A. I don't remember that.

"On a subsequent day, however, he corrected "his testimony so that it corresponded with For- "man's, and said that he had refreshed his mem- "ory on these points, and that Silva in reply to "Forman's question said, 'It is good ore, and as "'good ore as you will see here, if not better.' "And Forman makes a like statement in his testi- "mony. Silva, in addition to his positive denial "in his answer, testifies on this point positively "that there never was a word said about that. He "added that they asked me what I thought of the "ore body, and I said, I thought it would be ex- "tensive. I thought so at the time, and think so "yet. Eddy does not appear to have heard any "such statement on this point. Then the testi- "mony of Silva is directly to the contrary of that "of Yerington and Forman. Yerington did not "remember on the first day, but did on the second, "after refreshing his recollection. This testimony "was taken in June, 1886, about two years and a "half after the conversations related took place. "They were present at the time examining the "mine and engaged in the conversation for an "hour or more. These discrepancies in matters "of detail, during a long conversation related by "different parties, viewing the subject from differ- "ent standpoints, after a lapse of so long a period

"of time, are no more than might reasonably be "expected, even in honest witnesses.

"There is no occasion to impute any intention "to testify falsely to either. Viewing the case with "all the surrounding circumstances, and consid- "ering the presumption of innocence, we do not "think that we should be justified in finding that "Silva knowingly and wilfully made the represent- "ation in the form stated by Forman, and finally "by Yerington after a night's reflection and re- "freshing his memory, or made it substantially as "stated by them. Testimony as to oral statements "by parties antagonistic in interest, and especially "after a considerable lapse of time, are always un- "satisfactory. Parties are extremely liable to "misunderstand each other, and in looking back "upon the transaction in the light of subsequent "developments are prone to take the view most "advantageous to themselves. And it is on this "ground that oral contracts of importance are for- "bidden and made void by the statute of frauds. "It one party desires to hold another responsible "for representations made in a contract of great "moment, it is easy to put them in writing, and he "who neglects to do so, must be held to make the "most clear and satisfactory proof of oral repre- "sentations upon which he relies, to avoid a con- "tract where there is a disagreement as to what "was said."

Representation No. 3.

That there were not less than five hundred tons of ore, in his judgment, in and about the chamber.

The allegation of the bill is, "That there was "at least five hundred tons of ore exposed by the "excavation last above described, or in mining "parlance, five hundred tons of valuable ore in "sight in that place."

It will be seen that there is a vast difference between these two statements, one being a statement of a mere opinion; the other, that of a fact. Yerington admits that Silva's statement was qualified by the words, "in his judgment." Counsel admits in his brief that Silva did not state as a positive fact that there were five hundred tons, but merely that there were five hundred tons in his judgment. In other words, it is thereby admitted that Mr. Yerington's sworn statement in the bill on this point is not true. It follows, therefore, that this so called fraud falls to the ground. But taking it as alleged in the brief, it was merely the expression of Silva's opinion. One of the prime requisites of a fraudulent misrepresentation is that it must purport to be the statement of a fact, and not of an opinion.

2 Pom. Eq. Jur., Sec. 877--8.
Tuck v. Downing (7 Mor. Min. Rep. 84).
Rendell v. Scott (11 Pac. Rep. 779).

Representation No. 4.

That there were two thousand tons of ore in sight in the mine.

This allegation is not supported by the evidence. Yerington says (Record, pp. 325-6):

"We discussed the question of the quantity of "the ore in the mine, Silva, Forman and myself. "In discussing the quantity of ore, he said, 'You "'can rest assured that there are two thousand "'tons of ore in sight in this mine.' * * He "insisted that there were two thousand tons? I "differed with him. * * I came to the con- "clusion there could not be over a thousand tons. "We discussed the quantity at different points and "figured it up to see which was right. I could "not make out over one thousand tons. He in- "sisted that I was wrong in my judgment, and "that there were two thousand tons. He took "the ground all the time that there were two "thousand tons in sight.

In cross-examination he testified, he did not believe there were two thousand tons of ore in the mine; that he did not rely on Silva's statement in that regard, and did not purchase the mine on the theory or under the belief that there were two thousand tons (Record, p. 418); and yet in Paragraph X of the bill, we find Mr. Yerington swearing: "That this complainant believed all of the "said representations so made by the said defend- "ant, to be true, and relied upon them, and that

"believing in and relying upon said representa-
"tions, it was thereby induced to purchase, and
"did purchase on the faith of said representations,
"said mining claim."

We say the evidence shows, beyond a doubt, that this statement was nothing more than Silva's opinion. Yerington did not believe it. He did not rely on it It did not influence the purchase. However fraudulent his statement may be, if the vendee does not rely on it, it is not actionable.

2nd Pomeroy Eq. Jur. Sec. 877–890.

In reference to these last two representations, the lower Court said:

"It is manifest from the complainant's own tes-
"timony that this was a mere expression of opinion
"as to quantity. Silva said in express terms, as
"said by Yerington himself, that in his judgment
"there was so much in sight. Yerington differed,
"and thought there was much less. The differ-
"ence in opinion was discussed between them, and
"according to Yerington's own testimony, he did
"not rely on this statement. There is not suffi-
"cient evidence to show that this was not Silva's
"honest opinion. Besides, Yerington and his ex-
"pert, Forman, were as competent to judge how
"much ore there was in sight as Silva was. They
"were no novices in matters of that kind. This
"misrepresentation, if such it be, does not contain
"either the first, fourth, or fifth elements stated
"by Pomeroy as essential elements in a fraudulent
"misrepresentation."

Representation No. 5.

That the mine was worth $15,000.

Yerington testifies, that Silva said he had been asking $15,000 for the mine, but he would take $12,500. (Record, p. 329.) Forman says he does not recollect that Silva made any statement as to the value, but he heard Silva say he thought the mine was worth $15,000. (Record, p. 472.) Statements as to the value of undeveloped mines, however exaggerated, are not fraudulent in law, but are considered merely as *trade talk* and *puffing*, both of which are allowable.

McDowell v. Simms (6 Mor. Min. Rep. 476).
Tuck v. Downing (7 Id. 83).

In the first of these two cases, the statement was, that the mine was a *splendid article*, a valuable gold mine worth not less than $10,000. This was held to be no fraud. Besides, this allegation is not proven, because complainant has only the testimony of Yerington himself on the point, it being observed that Forman's testimony is that Silva said *he thought* the mine was worth $15,000. Since the bill calls for a sworn answer, and since the sworn answer was given, in which Silva denied positively that he made the alleged statement, it was necessary for complainant to have two witnesses to the fact, whereas, he has only one.

Representation No. 1.

That he had shown all the work which had been done in the mine that would throw any light on the quantity of ore therein.

It is claimed by the appellant that this was false, because Silva had drilled certain holes into the sides of the ore chamber, and had thereby discovered that it was a mere shell. Mr. Yerrington testifies that while they were in the mine, he said to Silva, "Now, have you shown the whole of this "mine? And he said "Yes, everything." (Record, p. 328.)

Silva testified that he told Yerington he had shown all the work that was done by himself or under his directions. (Record, p. 1355.)

An effort was made to bring in a conversation between Silva and Yerington at Carson City on the day of the purchase, in which Yerington claims to have asked Silva if he had done any work around the ore bodies that had not been shown. (Record, pp. 328-9.)

It will be remembered that Yerington had already, on February the 1st, written Silva the letter of that date (Exhibit A, Record, p. 331), in which he made an out and out straight offer of $10,000 for the property.

Hence, the subsequent conversation had at Carson City could have had no influence on the purchase. Yerington's mind was fully made up when he wrote the letter of February 1st, which letter

shows on its face that he had thoroughly investigated the matter. Complainant must therefore rely on the statement made at the mine, and we are free to admit that Silva did make the statement he testified to. He had shown all the work he had done. This was strictly true. He had shown all the work done by him, or under his direction. Appellant relies on two points to disprove this, viz., the shaft at the point of location, and certain alleged drill-holes; so far as the first is concerned, it is admitted that Silva never dug it. He knew no more about its existence than Yerington himself. One Edwards dug that shaft years before Silva bought the mine.

So far as the drill-holes are concerned, there is not a particle of testimony to show that Silva drilled them. True, Yerington swears in the bill that Silva drilled them, but then he has sworn to a great many other things in the bill that were not proven on the trial, and when he was on the stand as a witness, he was forced to admit that he did not know who drilled the holes, and did not know as a fact whether Silva drilled them or not. (Record, p. 394.) Silva denies positively in his answer that he ever drilled them, and complainant having called for an answer under oath, or what is the same thing, having failed to waive an answer under oath (Slessinger vs. Buckingham, 8 Sawyer), this denial in the answer is equivalent to the positive testimony of one witness, and it would be

necessary for complainant to disprove it by two witnesses, or one witness and corroborating circumstances. He has not even one witness, and he might safely rest this point without further argument; but even the circumstances are against him. Silva testifies that after he struck the ore body and stripped its face, it appeared to be extending downward through the bottom of the ore chamber. All the witnesses agree on this point. He then went back to Winze No. 1, sunk to the 82-foot level and began driving the drift on that level (which cost him over $2,000 at $12 per foot) for the purpose of getting underneath the ore body, this being deemed the best way to get at it for the purpose of removing it. (Record, p. 1368-9.)

Now, this is precisely what Coffin, Yerington's superintendent, commenced to do when he commenced operating the mine for Yerington. (Record, p. 587.) Silva suggested this course (Record, p. 318), and he was put to work in the face of this drift on the 82 foot level as the foreman of the mine for Yerington. Hence, we see that Coffin took up the work where Silva left off, and was merely carrying out his idea, viz., to get underneath the ore body.

Now then, if Silva had drilled these holes, or knew of their existence, he knew that the ore body terminated within a few inches of the surface, and is it possible to conceive that he would have undertaken the work of getting underneath

the ore body by driving the drift on the 82-foot level, before the Yerington purchase, or after he purchased, would he have advised the continuance of such a senseless undertaking? If he had discovered, by means of the drill-holes, that the ore body was limited, as claimed, why should he have set about doing the immense amount of work necessary to get underneath the ore body, as though it were a large and continuous deposit? Mr. Silva is admitted to be a skillful and experienced miner; but it would have been little short of idiocy to have planned this work and undertaken it before the purchase, or to have advised continuing it after the purchase, had he known of those drill-holes; for it is charged that by means of the drill-holes he had discovered that the ore body had pinched out. There is one small bit of testimony on this point which we will notice, more on account of its novelty than anything else. It appears that a long time before Yerington's visit, Silva bought from one Gorman a bar of steel seven feet in length (Record, p. 644–5), from which he made two drills—one three feet, and the other four feet in length (Record, 1399). It further appears that Coffin, Yerington's superintendent, found a six foot drill on a hill near the mine. From these facts, the learned counsel would have the Court infer that Silva drilled the holes. It is useless to comment on the utter worthlessness of such testimony. It certainly does not meet the

requirements of *Tuck v. Downing* (supra) and many other cases, which hold that the fraud must be established by clear and unmistakable proof.

Further, Silva denies in his testimony that he drilled the holes. That testimony is as follows:

"Ques. Did you do any work in that chamber "which you covered up and concealed from Mr. "Yerington or any other person?

"A. I didn't do any work or conceal anything.

"Ques. Did you drill holes in that chamber in "any place which you afterward concealed?

"A. No, sir. I never drilled any holes in that "mine except what I had to do as a miner. (Rec- "ord, p. 1364.)

"Ques. Did you conceal from him any work "which you knew was done in that mine?

"A. I showed him all the work that was "done in the mine that I knew anything of" (Record, p. 1382).

Besides, Silva makes a categorical denial in his sworn answer.

Counsel claims that this testimony is an admission that Silva drilled the holes; but by what legerdemain of logic, he can torture this into such admission, we fail to see. Silva denies point-blank that he drilled the holes in question, and then adds that he never did any drilling anywhere in that mine except what was necessary to proper mining. This addition to the answer was proper. He did do an immense amount of drilling in that

mine, for mines cannot be worked without drilling, but it was done in the ordinary course of mining; i. e., by charging with powder and exploding. Counsel's argument on this point is on a par with the episode of the six-foot drill.

It is further claimed by counsel that in the conversation between Silva and Yerington at Keeler, after Silva had been arrested, when Yerington accused him of having drilled the holes, he, Silva, did not deny it. This is unsupported by the record.

Daniel Crough, the Deputy Sheriff who arrested Silva, and who is a disinterested witness, was present at that conversation. He states that Yerington there accused Silva of drilling the holes, *and that Silva then and there denied it.* (Record, p. 864–5 and 867.)

This was the same conversation at which Yerington told Silva he would send him to the penitentiary for ten years if he did not give back the money. (Record, p. 867.)

But it may be asked who did drill the holes? We frankly say there is no satisfactory evidence to fasten the iniquity on any one. It is no concern of ours who the perpetrator was, so long as it is not shown to be Silva. It is boldly asserted, and sworn to in the bill, that Silva did the drilling. This is complainant's whole case, and it was his duty to prove it. He has not produced a scrap of positive testimony to prove it. Yerington says

he does not know. Silva denies it. . The circumstances tend to show that it is highly improbable that Silva drilled them. In such state of proof, how can it be asserted that Silva did the drilling? It is simply a case of failure of proof, and by all rules of equity practice, Silva must go free.

But before we leave this point, we desire to make one suggestion. Coffin, Yerington's superintendent, was working the mine six weeks before he cleared out the ore chamber, and he was driving the drift on the 82-foot level in order to make the connection with the ore chamber. During that time, he went into the chamber every day. He was there perhaps a hundred times, looking around and trying to catch from the sound of the workmen driving the drift underneath, where the upraise would come; *i. e.*, where the connection would be made with the chamber. (Record, p. 580.) Is it not barely possible that while Coffin was in the ore chamber so often *looking around* and *listening*, he might have whiled away his time in testing the thickness of the ore body? Nothing would have been more natural. Here was an undeveloped ore body. It was apparently continuous downward and laterally. He was naturally anxious to know its extent. He was doing nothing particularly but *looking around* and *listening*, according to his own statement. Under such circumstances, what was more natural than to pick up a drill and drive it into the sides

of that ore body, and test its thickness? He is the man who discovered the six-foot drill, and so far as the evidence shows, is the only person who knows anything about that mysterious implement. Perhaps he might have used that very drill to make the holes. It was long enough for that purpose, for the deepest hole was not over three feet and a half. We say that the gratification of natural curiosity would have been a sufficient motive. Besides, a gang of men was working in that mine for six weeks under Forman and Yerington, not one of whom was called to testify.

Further, other people had worked in that mine besides Silva. He had purchased the mine from one Edwards, several years before the sale to Yerington, and a large amount of work had been done in the mine before he ever got it. Is it not as probable that the drilling had been done by some of the other persons as by Silva, there being an entire absence of evidence on the subject? Of course, this is all surmise, but it is not our duty to prove who did the drilling. We refer to it simply to show that it is just as plausible to suppose that Coffin or somebody else did it, as to suppose that Silva did. This is another case of failure of proof.

In regard to these drill-holes, Judge Sawyer said in his opinion (Record, p. 226): "There were "some drill-holes filled up, said to have been after-"wards found in the ore, but there is no direct

"testimony that Silva drilled them. On the con-
"trary, Silva testified positively that he did not
"drill them. Coffin testifies that later he found
"an old drill about six feet long, outside on the
"hills to the left of the tunnel, which was not
"brought there by his orders. This and some
"other circumstances, such as that Silva once
"bought a piece of steel, of which the drill found
"might have been made" (N. B.— Here, the Judge is slightly mistaken, because out of the bar of steel which Silva bought, he made two drills; one three feet, and the other four feet long. Record, p. 1399), "are relied on to show
"that Silva did the drilling. But others owned
"and worked the mine before, as well as after,
"Silva owned it, and besides, a drill is daily used
"in legitimate mining. This evidence is wholly
"insufficient to overthrow the direct positive tes-
"timony of Silva that he did not do it, strength-
"ened by the fact that he commenced running the
"tunnel on the 80-foot level to reach this same
"vein, the same tunnel which was extended by
"complainant after the purchase, which he would
"not be likely to have done had he drilled these
"holes, and found that the vein had run out.
"These holes may have been drilled also, before
"Silva's time, or even after his sale, by others. It
"is simply unknown who drilled them. At all
"events, the testimony is insufficient to justify us
"in holding that he did it or knew of them."

Before leaving these alleged fraudulent representations, we desire particularly to call this Court's attention to one very suggestive fact. The bill in this case, sworn to by Yerington, charges a number of alleged fraudulent representations, concerning which counsel is discreetly silent in his brief. No mention whatever is made of them, and hence they are abandoned on this appeal.

One of them, particularly, alleged that Silva had dug a certain shaft, and finding no ore had covered it up and concealed it. This shaft was afterwards unearthened by Yerington's workmen, and thereupon Yerington swore in his bill, without any other evidence before him whatever, that Silva had dug it and filled it up for the purposes of concealment. But the evidence shows conclusively that Edwards, from whom Silva purchased the mine, had dug the shaft and filled it up himself many years before Silva purchased the mine, and that Silva was as ignorant of its existence at the time of the sale to Yerington, as Yerington himself. So, likewise, the evidence wholly failed to establish the other alleged fraudulent representations charged in the bill, and not found in the brief, and the lower Court so found.

This ruling is now apparently acquiesed in by appellant's counsel. Under such circumstances, this Court may well be justified in viewing Yerington's entire testimony with suspicion.

We have now gone over all the alleged fraudulent representations and endeavored to show that they were never made. We shall now consider certain other matters which are sufficient to overthrow complainant's case.

III.

The evidence shows that Yerington did not buy the mine on Silva's representations, but on his own judgment.

(1.) In the first place, it is very improbable that he did so buy the mine.

The two men were utter strangers. Yerington sc testifies (Record, p. 307). They were dealing at arm's length. There was no relationship of trust. In such cases, the rule of *caveat emptor* applies, and it is the policy of the law that each party be left to his own judgment. Besides, it is improbable that so experienced a miner as Yerington, with so experienced an expert as Forman to aid him, after such a prolonged and thorough examination of the mine itself, and the careful consideration he gave the mine, should blindly and with childlike confidence rely upon the exaggerated statements of the owner as to the great value of the mine, and the possible continuity of the ore bodies.

(2.) Yerington was eager for the mine and anxious to get it, while Silva was not anxious to sell at the price paid.

It appears from the evidence that Yerington was the chief promoter and manager of the Carson and Colorado Railroad which ran through the County of Inyo; that as such it was to his interest and he desired to procure as much freight as possible for the road; that he did not desire to get the mine for the purpose of making money out of the ore, nor did he intend to work the ore at the mine. His idea was to transport the ore over the railroad to a smelting furnace located at a station on the road called Elna. In that way he expected to be able to save himself on the actual working on the ore, and to realize a large profit by the freight paid for the transportation, and thereby benefit his railroad. He did not expect to make money out of the mine directly, but hoped to clear himself in the way stated and lose nothing (Record, pp. 308-329-330). For these reasons he was anxious to get the mine.

As further proof, he made diligent inquiries long before the sale. He spoke to J. C. Eddy about it, to W. P. Miller, S. D. Woods, Wm. Hamilton, Charles Forman, D. L. Bliss, and, to use his own words, "quite a number," whom he did not remember. He also wrote to Thomas Price, the celebrated assayer of ores in San Francisco, and got his opinion on the value of the mine (Record, pp. 384-7). The reports of all these men were favorable. In addition to this, he employs an expert of high standing, goes with him

to Darwin, hunts up Silva, and after much urging induces him to go out to the mine, 12 miles distant, and show it to him. He and his expert examine the mine thoroughly without any obstruction from Silva. Many samples are taken by Yerington and his expert, selected according to their own judgment, from different places in the mine, from which assays are afterwards made. These assays all proved satisfactory, and the whole evidence shows that Yerington was exceedingly anxious to get the mine.

On the other hand, Silva was not anxious to sell at the price named. Witness his conduct at the time of Yerington's visit. Yerington looked him up—hunted him up, and asked him if he was willing to show the mine, not to sell it, merely to show it. Silva said "No," as he had already had considerable bother in that line about showing his mine to people; but on being pressed urgently by Yerington, he finally consented to show it (Record, p 1350). Eddy corroborates this (Record, p. 1160), and after the return from the mine, when Yerington took Silva into the back of J. C. Eddy's store in Darwin, and offered him $10,000 for the mine, Silva refused to accept it, saying that he had already been offered that sum for the mine by Yerington three times. We ask the Court to read Silva's testimony on these points carefully. It will be found at pp. 1350 and 1355 of the Record. It bears the stamp of truth on its face.

How utterly does this evidence fail to substantiate the allegations of the bill: "That on or "about the 15th day of February, 1884, the said "defendant offered to sell to complainant for the "sum of $10,000, that certain mining claim, etc.; "that in order to induce complainant to purchase "said mining claim, and to pay him the sum of "$10,000 therefor, the said defendant, with intent "to deceive and defraud the complainant, did "knowingly, dishonestly and fraudulently repre-"sent, etc."

On the contrary, Silva never offered to sell the mine for ten thousand dollars. Mr. Yerington, of his own accord, offered to pay that sum, and sent Silva a formal offer in writing. It was Yerington who was eager to buy, not Silva who was eager to sell. Under such circumstances, it is highly improbable that Silva ever made the alleged fraudulent statements for the accomplishment of a thing which he did not desire. It was only through Yerington's persistency that Silva was finally goaded into selling for $10,000.

It is incumbent on a complainant to show a fraudulent intent on Silva's part to induce Yerington to purchase for $10,000; but this evidence negatives any desire on Silva's part to sell for $10,000; and hence, there could be no motive for making the alleged representations.

(3.) Yerington experted the mine thoroughly, and bought it on the advice of his expert, Charles Forman.

Forman was an experienced miner of twenty-five years' standing (Record, p. 457), engaged on the celebrated Comstock mines at Virginia City. He had visited the Stirling Mine in 1883, with D. L. Bliss, one of the Directors of the Southern Development Company, and with F. S. Bliss, L. D. Woods and Silva, and had formed a favorable impression of it (Record, p. 457). When he made the visit with Yerington in 1884, a minute and thorough examination was made. Samples were taken from all parts of the ore chamber, as well as other portions of the mine, and assays were made therefrom. These were selected by Forman, and he would not allow Silva to select them (Record, pp. 482–3). He did not and would not rely on Silva for the samples (Record, pp. 482–3). He thought it a safe proposition at $10,000 (Record, p. 471). He did not rely on any of Silva's statements, except the one that no secret work had been done to show the extent of the ore body (Record, p. 479). J. C. Eddy, a disinterested witness, was present, and states that Yerington and Forman examined the mine all they wished, and made a thorough investigation (Record, p. 1164–6, 1175–88). In the face of all this, how can we resist the conclusion that Yerington purchased on the advice of Forman and his own judgment.

In this connection, we desire to call particular attention to the case of TUCK vs. DOWNING (76 Ill. 71, and S. C. 7 Morrison's Mining Re-

ports, 83). There, a bill was filed to rescind a sale of a mine on the ground of fraudulent representations on the part of the vendor. A committee had been selected by the vendee who personally visited the mine and made a thorough examination. A report thereof was made to the vendee, and a sale consummated. Held: that under such circumstances no action would lie. The vendee relied on the report of the committee, and as the committee were employed to examine the mine, any exaggerated statements made by the vendor were to be considered merely as puffing, and not entitling the vendee to a rescission. The Court said it was merely the case of a bad speculation. So here, Yerington has made a bad speculation based on his own judgment, and that is the whole case.

(4.) Silva's conduct consequently to the sale proves his innocence.

After he received the $10,000, he was taken by Yerington to Wells, Fargo & Co.'s Bank, and there deposited $7,500 of the money, and received in exchange a certificate of deposit: the balance of the money he took in cash. Silva then returned to Darwin, paid his debts with the $2500, and then went to work for Yerington in this Stirling Mine. If he had been guilty of a fraud, he never would have left his money tied up at Carson City, Yerington's own

home, where its payment could be easily stopped on the discovery of his fraud. He would have put the money in his pocket, or some other safe place, for he would have known that the fraud would soon be discovered, and that Yerington was not the man to let him go unpunished. This leaving of the money in Carson City can be explained on no other theory than that of Silva's innocence, for if he were clever enough to outwit such experts as Yerington and Forman in the sale of the mine, he certainly must have been clever enough to know that as soon as the fraud was discovered Yerington would stop payment of the certificate.

In the next place, how are we to account for the fact that Silva went to work in the mine for Yerington? If he had drilled those holes, and discovered the extent of the ore body, he knew beyond a doubt that the fraud would be discovered in the course of the work on the mine, and the safest place for him would be the most distant place from the mine. With so large an amount of money, he could have gone anywhere he liked, and if he had been guilty he would have done so. But instead of that, he goes to work right in the mine itself and works there until his ill health compels him to leave off. A point has been sought to be made on the fact that he did leave off before the drill holes were discovered, but we think the following extract from his testimony completely disposes of it, viz.:

"I worked 16 days, I think, and I got sick. I "stayed in Lone Pine about six weeks. After I "sold the mine, when I went down in the train, "we got fast in the snow at Benton. We stopped "there about six days shoveling snow. I think "that is how I got the rheumatism. We had no "blankets and no grub there."

Silva's Testimony, pp. 1355–6.
Coffin's Testimony, p. 565.

(5.) The character and conduct of the two parties throughout the entire transaction negative any fraud on Silva's part.

As for Silva, he was a miner who had resided in Inyo county since 1867, during all of which time he was engaged in mining. He had been digging away in this very mine for seven or eight years (Record, p. 1549), and was working on it the day before Yerington's visit. (Record, p. 1369.)

To show his honesty, the first thing he did after getting his money was to pay his debts, though many of them were barred by the statutes of limitation. (Record, pp. 1356–7.) Much of the money he owed had been borrowed, and the lenders held no security whatever but his word. (Record, p. 1357.)

That he was held in high esteem by his neighbors, is proven by the testimony of many of the most prominent men of Inyo County, who say that his reputation for truth and integrity was ex-

cellent, and had never been questioned until this Yerington affair.

Testimony of Alexander, pp. 695–6.
Testimony of Harris, pp. 805–6.
Testimony of Mairs, p. 850.
Testimony of Anthony, p. 895.
Testimony of Irwin, pp. 1035–6.
Testimony of Eddy, pp. 1130–1.

Mr. Yerington himself seems to think that the whole community of Inyo County took sides with Silva, and claims that as a reason why he transferred the case to the Federal Court (Record, p. 379). A perusal of Silva's account of the transaction, and of what occurred between them while in the mine, bears on its face the evidence of truth, and we ask the Court to carefully read the same. It will be found at pages 1351 *et seq* of the Record.

As for Mr. Yerington, his record, as shown by this case, does not appear to be the most enviable. After taking out all the ore, and discovering that the mine was worthless, according to his statement, without saying a word to Silva, he swears to and files a complaint against him in the Civil Court, and then has him arrested on a criminal charge, and while he is under arrest endeavors to extort money from him by force, to compound a crime, threatening to send him to the penitentiary for ten years if he did not comply. Silva refuses,

and Yerington has him prosecuted, employing three attorneys therefor; but, on a trial, the jury fails to convict (Record, pp. 378–382–836), and he is discharged.

It further appears from the evidence, that Mr. Yerington is guilty of some wild and reckless swearing, to call it by the mildest terms. He has made far more misrepresentations than those with which he charges Silva, and we shall now specify some of them:

Yerington's Misrepresentations.

No. 1.

He swears in the bill that Silva made a positive statement as a fact that there were five hundred tons of ore in the ore chamber, knowing at the time it was false.

The evidence shows, and Yerington is forced to admit on the stand, that such was merely Silva's opinion.

No. 2.

He swears in the bill that Silva stated as a fact that there were 2000 tons of ore in the mine.

The evidence shows, and the lower Court found, that this was merely Silva's opinion.

No. 3.

He swears in the bill that he relied upon the alleged statement as to 2000 tons, and believed it, and was thereby influenced in the purchase.

He admits on the stand that he did not rely on or believe said statement, and never did believe there were 2000 tons in the mine.

No. 4.

He swears in the bill that Silva knew of the shaft at the point of location, and had covered it up and concealed it from view.

The evidence shows that Edwards dug the shaft, and filled it up eight years before Silva was arrested, and that Silva knew nothing about it until after he was arrested.

No. 5.

He swears in the bill that Silva covered up the bottom of the ore chamber with loose ore and dirt.

It appears from the evidence, and from Yerington's own statement, that the ore had slacked down by natural causes like wheat.

No. 6.

He swears in the bill that Silva drilled holes in the mine, but when on the witness stand, he was compelled to admit that he did not know who drilled them.

No. 7.

He swears in the bill that he believed and relied upon each and all of the alleged representations of Silva.

He admits in his evidence that he did not believe or rely upon all of them, but only on some of them.

No. 8.

He swears in the bill that Silva offered to sell him the mine for $10,000, and in order to induce him to purchase for that price, made the alleged representations.

It appeaas from the evidence that Silva never offered to sell for $10,000 but that he offered to sell first for $15,000, and then for $12,500; that he did nothing to induce Yerington to purchase for $10,000, but that Yerington himself offered $10,000, and Silva was finally goaded into selling for that sum.

No. 9.

He swears in his testimony that while he was in the ore chamber, the little shaft in the S. E. corner was filled up with dirt, and that he dug no samples therefrom.

Both Silva and Eddy testify that said shaft was not covered up and concealed, but that Yerington and Forman both stood in it, and took samples therefrom.

No. 10.

He swears in the bill that prior to the suit, the complainant made and tendered to Silva a deed of the property, and demanded a rescission.

It appears from the evidence that the original complaint had already been sworn to the day previous to the alleged rescission, and the only deed produced as having been made is dated April 13, 1885, nearly one year afterwards.

No. 11.

He swears in his evidence that he never offered $10,000 prior to his visit in February, 1884, and yet the witness Boland testifies that Yerington authorized him to make such offer to Silva prior to the visit of February, 1884 (Record, p. 828), and Silva says he had received that offer three times.

No. 12.

He swears in the bill that Silva knew all the time that the mine was absolutely worthless.

I appears from the evidence that Silva knew nothing of the kind, and as a matter of fact the mine was not absolutely worthless. The bill itself admits that there was $2500 worth of ore in it, and the evidence shows that there is still ore in the mine.

Samples of such ore were offered and admitted in the evidence, and referred to the lower Court for inspection.

In conclusion, on the merits, we say that at five different times Yerington *offered $10,000* for the Stirling Mine before he had met Silva.

Wood's Letters, Record 200, 201, 206.
Boland, 1092–1093.
Anthony, 1009.
Eddy, 1157.
Silva, 1372–1375.

Silva had the best of reasons for considering the mine valuable, as he had taken out ore which went as high as $73.53 per ton (Record, p. 1367).

At the time Yerington purchased the mine, the ore chamber was 4 or 5 feet wide, 7 or 8 feet in height, and 16 or 18 feet in length (Record, 1359). After Yerington worked and took out all the ore in said chamber, it had been enlarged as follows, viz.: from 13 feet 8 inches wide across the S. E. end to 17 feet throughout the remainder, 18 feet in height, and 21 feet in length (Record, 727½).

After its enlargement and at the time this action was tried, the ore-chamber contained much valuable ore upon its sides, and in certain places the lode therein was at least three feet in width, extending from the S. E. corner crossing over and up the N. E. side to the 38-foot level. The ore had not been entirely stripped out, but is still there; and it is impossible to know the extent of it. It may even now extend indefinitely. See upon this subject the testimony of Alexander, the Surveyor who made the survey for appellee, in June, 1886, and appellee's Map Exhibit E, and also the testimony of Eddy, Fitzgerald and Anthony, all of whom visited the mine together for

the purpose of examining it and especially the ore-chamber, to find out whether the sides of said ore-chamber were composed of lime or ore. Each of said parties testified that the ore-chamber contained bodies of carbonate ore.

The chamber having been so widened out and ore being still upon its sides, it follows conclusively that 18-inch drill holes could never have pierced through into the lime rock.

Appellant relies almost exclusively upon the testimony of Coffin, an interested witness, to prove that the drill holes, alleged to have been found in the ore-chamber, pierced through the ore into lime rock. This witness, upon cross-examination, testified that he never saw the butt of a single drill-hole in the ore-chamber (Record, 567–77); but does testify that the deepest hole was three feet, *and ended in ore.* Hence, instead of the drill-holes developing the fact that the ore was a mere shell upon a lime wall, the deepest hole revealed the existence of an indefinite ore body, so far as appearances went.

Yerington having made up his mind to pay $10,000 for the mine before he had spoken to Silva, and having made that offer five times after hearing all that Silva had to say, was not persuaded by any of Silva's representations to raise his figures a solitary cent, but still insisted that the mine was not worth more than $10,000 and that was all he would pay. Does not this show

that Yerington's opinion as to the value of the mine was not influenced in any way, shape or form by anything which Silva said? *Yerington purchased on the prospect, the opinion of his expert, and his own judgment.*

Should the Court decide against the appellee on the merits, still there are certain technical points which are fatal to appellant's case.

IV.

There never was any valid rescission in this case, or offer to rescind by the complainant.

It must be admitted that no such action as the one at bar can be maintained *until there is a valid rescission on the part of complainant.* This is of the very essence of the cause of action and a *condition precedent* to its maintenance. The complainant admits this, because it is alleged in the bill that it offered to rescind prior to suit brought (p. 15 of Bill).

Section 1691 of the Civil Code of California says: "Rescission, when not effected by consent, "can be accomplished *only* by the use, on the part "of the party rescinding, of reasonable diligence to "comply with the following rules:

"1. He must rescind promptly upon discover-"ing the facts which entitle him to rescind, if he "is free from duress, menace, undue influence or "disability, and is aware of his right to rescind; "and,

"2. He must restore to the other party every-
"thing of value he has received from him under
"the contract, or must offer to restore the same,
"upon condition that such party shall do likewise,
"unless the latter is unable or positively refuses
"to do so."

These doctrines are nothing more than an enunciation of the well-established rule that he who seeks equity must do equity.

Now the only rescission, or attempt at rescission, in this case was that sought to be made at Keeler, in Inyo county, on May 8, 1884, and subsequently on the same day at Independence.

Mr. Yerington, on direct examination, stated that as soon as he discovered the fraud he went back to Carson and notified Wells, Fargo & Co. not to pay the certificate of deposit to Silva; that in company with Gen. Clark he went to Independence the next day—went to Mr. Conklin, his attorney, and swore out a warrant for Silva's arrest, who was then at Lone Pine; that he *thinks* he had a deed made out of the property; that the warrant was given to the Sheriff, who went to Darwin, arrested Silva and brought him to Keeler, a small station on the Carson and Colorado R. R.; that he (Yerington), with Mr. Conklin and Gen. Clark, went to Keeler; they took Silva into the office and shut the door (this was some time in May—he had forgotten the day); that he felt very indignant and talked very severely to

him—accused him of having committed a fraud, and that he did not propose to stand it (and to use his own language), "*I finally said: 'You have com-*
"*'mitted a great wrong here, and I want you to*
"*'rectify it as far as you are able. I am pre-*
"*'pared to give you a deed of this property, and*
"*'you give me back my* $10,000.' * * * *He*
"*said: 'I will not do it. That is flat. It is no*
"*'use talking.'*" That then they went to Independence; when they arrived and Silva was being taken to the jail, Yerington said: "Now, I will "make another proposition. I will give you a "deed of this property. You can take everything "that is there, and you give me back this certifi-"cate of deposit for $7500, and that ends the "whole business. He said he would not do it" (Record, 357).

At this point the testimony was adjourned until the next day. His counsel was evidently not satisfied, for *on the next day* the first thing we find is the following unique bit of testimony, viz.:

"*Mr. Reddy*—Q. Mr. Yerington, you say that "you met Mr. Silva at Keeler early in the first "days of May?

"A. Yes, sir.

"Q. At the railroad office?

"A. Yes, sir.

"Q. State whether you made a demand on "him for the rescission of the sale of the property?

"A. I did.

"Q. State whether you demanded of him the "certificate of deposit for seventy-five hundred "dollars which he received from Wells, Fargo & "Co.?

"A. I did.

"Q. Did you state to him the ground upon "which you demanded the rescission of the sale "and the return of the certificate of deposit men- "tioned?

"A. On the ground that he had committed a "fraud in the sale of the mine to me, and that he "had received the money under those circum- "stances; consequently, I demanded that he give "me back the money and the certificate, and I "would make him a deed for the property.

"Q. State whether you tendered him a deed, "and whether you offered to give him back pos- "session of the property just as it stood then?

"A. I did.

"Q. Of the entire property?

"A. Everything that we purchased of him. "* * * * *

"Q. Have you ever withdrawn that offer? "Have you always been ready and willing to make "that offer good?

"Always.

"Q. I believe the company executed another "deed on the 13th day of April, 1885, and filed it "with the Clerk of the Circuit Court in San Fran-

"cisco, conveying all the property which you had "received from Silva?

"A. Yes, sir.

"Q. Look at that deed. Do you recognize "that deed?

"A. I believe I do. That is supposed to be a "copy of a deed that was given. I know I sent a "deed down at that time, and, so far as I know, "that is a copy.

"*Mr. Reddy*—We offer a certified copy of the "deed in evidence.

"(Admitted and marked Complainant's Ex-"hibit 6).

"Q. What answer, if any, did the defendant "Silva make to the various demands and offers "you have testified to?

"A. He refused positively to accept them" (Record, 359).

On cross-examination, Yerington testified that the first time he ever offered to rescind was at Keeler; that he first arrested Silva before making any proposition; that he demanded that Silva give back the $10,000 and take the property; that Silva refused; that he told Silva if he did not do so he would be prosecuted to the full extent of the law, but if he agreed to do as requested, the criminal proceedings would be dropped; it *would settle the whole business* (Record, 427 et seq).

Daniel Crough, the Deputy Sheriff who arrested Silva, testified that he received the warrant of

arrest on May 7, from Mr. Conklin, Yerington's attorney, who told him to arrest Silva and tell him however "*He guessed they could fix the matter "up*" (Record, 861); arrested Silva on May 8th, and took him to Keeler, which had been appointed by Yerington as a place of meeting (Record, 864); Yerington there accused Silva of drilling the holes; Silva denied it (Record, 864–5); heard Yerington say to Silva he would send him to the penitentiary for ten years if he didn't give up the money (Record, 867).

Silva's account is found in Record, 1351–6, 1383–4–5–6–7–8, particularly 1386–7, and we request the Court to read the same in connection with that of Yerington.

The foregoing is all the testimony on the question of rescission. It fails to show a valid rescission or offer to rescind for the following reasons:

(a) It does not appear that Yerington tendered to Silva a deed of the Stirling mine and the other mines and springs of water, or offered to return everything of value received from him.

Silva denies it point blank, and his word is certainly as good as that of Yerington. The one simply offsets the other, and there is no preponderance of evidence on behalf of complainant, which it must have, in order to win. Besides, it clearly appears that Yerington told a falsehood when he said he did tender the deed; for when left to give

his testimony according to his own ideas on the first day of his examination, he did not testify that he tendered the deed, but merely says *he thinks he had a deed made out* (Record, 354). It was not until the next day, having doubtless been in consultation with his counsel during the night, that he testified to the tender of a deed, and even then it was in answer to *leading questions*, or at any rate, questions which are highly objectionable in form. Further: if he tendered a deed, where is it? Why was it not produced and put in evidence? And why is its absence not accounted for? And why has not Mr. Conklin testified on this point? He was present at the time. The record is silent on these suggestive queries. Mr. Yerington, however, did have a deed made out; but that deed was not made until *April 13th*, 1885, *and filed in Court on the 13th day of July*, 1885. Mr. Reddy volunteers the statement (Record, 361) that this deed is a copy of the deed tendered to Silva on May 8, 1884, at Keeler. Barring the fact that this is not evidence, we ask *why is the deed dated April* 15, 1885? It is a legitimate conclusion from these facts that no deed was tendered to Silva at Keeler, on May 8, 1884, or at any time prior to the commencement of the action. That such tender of a deed was necessary, see—

Wilbur v. *Flood*, 16 Mich. 45.
Pearsoll v. *Chapin*, 44 Penn. St. 9.

(b) No offer was made by Yerington to return to Silva the ore taken out of the mine, nor to pay him the value of it.

It appears from the testimony that Yerington took out over thirty-six tons of ore, and that the same was valuable. It is admitted in the bill that there were 100 tons in the mine, of the value of $2500. Under § 1691, C. C., it was his duty to return "everything of value" received under the contract. Hence, it was his duty to return this ore taken out, or to pay its value.

(c) The proposition of rescission was made while Silva was under duress, menace, threats and undue influence.

Silver was first arrested before a word was said to him. He was brought to Keeler and shut up in the office of Yerington's railroad station, and there threatened with imprisonment in San Quentin for ten years if he did not rescind the contract. A guilty man would never have withstood such pressure, and it not only redounds to Silva's manhood that he indignantly spurned the offered bribe, but furnishes the most pursuasive evidence of his innocence. Had he yielded to the threats and rescinded, such rescission would not have been valid or binding on him, for the reason that it was made under duress, and hence Yerington's offer made under such circumstances cannot amount in law to a valid rescission.

There is another point here. Yerington's proposition was *an offer to compound a felony.*

The Penal Code, § 153, provides: "Every per-"son who, having knowledge of the actual com-"mission of a crime, takes money or property of "another, or any gratuity or reward, or any en-"gagement or promise thereof, upon any agree-"ment or *understanding* to compound or conceal "such crime, or *to abstain from any prosecution* "thereof, or to withhold any evidence thereof, "except in the cases provided by law in which "crimes may be compromised by leave of Court, "is punishable as follows" [here follows the various punishments].

This provision is in accord with 2 Wharton's Crim. Law, 8th Ed., § 1559, and 4 Blackstone's Commentaries, 124-126. What was Mr. Yerington's offer but an offer to compound a crime, both under the common law and the Code? He who comes into equity must come with clean hands, for "He that hath committed iniquity shall not "have equity."

Has not Mr. Yerington violated all conscience and good faith by his offer to compound a crime? Certainly he seems to us to have disentitled himself to any relief in a Court of Equity, where, if he has any standing at all, it must be on the score of conscience and good faith, since every suit in equity is but an appeal to the conscience of a chancellor in cases where the rigors and hardships of the law would leave him without a remedy.

V.

If the alleged rescission was otherwise valid, it was not made until after suit was brought.

It is a plain proposition that if rescission or an offer to rescind were necessary at all, it must be effected before suit is brought. It is a condition precedent to the commencement of the suit. So says Thornton, J., in *Hermann* v. *Haffenegger*, 54 Cal. 164, and the following cases are to the same effect:

Giffard v. *Carvill*, 29 Cal. 579.
Getty v. *Devlin*, 54 N. Y. 403 and 7 Mor. R. 29.
Byard v. *Holmes*, 33 N. J. L. 119, and 6 Mor. R. 599.
Cook v. *Gilman*, 34 N. H. 556.
Basset v. *Brown*, 105 Mass. 557.
Schiffer v. *Dietz*, 83 N. Y. 308.
Cobb v. *Hatfield*, 46 N. Y. 536.
Massen v. *Bovet*, 1 Den. 74.
Wilbur v. *Flood*, 16 Mich. 45.
Beetem's Admnr. v. *Buckholder*, 69 Penn. St. 249.

The original complaint was drawn and sworn to on *May* 7, 1884, one day before the alleged rescission (see the complaint). It was filed on May 8th. Silva was arrested at Darwin on the morning of May 8, and taken over to Keeler later that day,

so as to meet Yerington by appointment that evening (Test. p. 863 *et seq.*). They left Keeler for Independence, which was 25 miles distant, *in the evening* (Test., p. 865). Consequently, they did not arrive at Independence until the evening, and it is plain that the complaint had been filed before Yerington arrived at Independence. It was complainant's duty to show affirmatively that the complaint was not filed until after the alleged rescission at Keeler.

VI.

Even if the offer to rescind was valid and made in due time, the parties cannot be placed in statu quo.

In order to administer complete justice in such cases as this, the decree of the Court will be that both parties be placed in *statu quo*. The complainant will be required to return to the defendant everything of value received by it under the contract; and the defendant will be required to return to complainant everything he has received. In this way each party will be restored to his former position as existing prior to the contract. If for any reason whatever such a decree cannot be made, then the suit must fail. Says Mr. Justice Field in *State of California v. McCauley*, 15 Cal. 458, "quoting from Parsons on contracts: "Generally, "no contract can be rescinded by one of the par- "ties, unless both can be restored to the condition

"in which they were before the contract was "made."

And said your Honor in *Gifford* v. *Carvil*: "He "who would rescind a contract must put the other "party in as good a situation as he was before, "otherwise he cannot do it."

And to the same effect are the following:

California v. *McCauley*, 15 Cal. 429.
Fratt v. *Fisk*, 17 Cal. 380.
Commissioners v. *Younger*, 29 Cal. 172.
Morrison v. *Lods*, 39 Cal. 381.
Perley v. *Balch*, 23 Pick. 285.
Hunt v. *Silk*, 5 East. 449.
Massen v. *Bovet*, 1 Den. 69, 74.
Reed v. *Blanford*, 2 Young & J. 278.
Turnpike Co. v. *Commonwealth*, 2 Watts. 433.

Applying these principles to the case at bar, it will be seen that the parties cannot be placed in *statu quo*.

(a) Complainant has taken out and sold all the valuable ore in the mine.

There can be no doubt that at the time of the purchase the Sterling mine *as it then stood*, was a fine prospect. There was in place an apparently large body of undeveloped ore, rich in silver and lead. As a prospect it was a valuable property, as is shown by the fact that an old and experienced miner like Yerington, considered it worth

$10,000. But the condition of the mine to-day is far different. It has been completely gutted, and all the valuable ore (according to complain ant's theory) taken out. As a prospect, therefore, the mine is far less valuable than it was prior to the sale, and if we believe Mr. Yerington, is practically worthless. In such case, therefore, it is impossible to replace Silva in *statu quo* by giving him back the mine in its *present condition.* The Stirling mine of to-day is a far different thing from the Stirling mine of February 15, 1884. Had complainant sold the mine to other parties, there would be no question as to its inability to place Silva in *statu quo.* Such was the case of *Hermann* v. *Haffennegger,* 54 Cal. 163, where the injured party had sold a portion of the stock and land, the subject-matter of the contract, to other parties. That case is not different from ours in principle. Again, suppose the sale had been of timber land, and after the purchase, the complainant had cut and sold the timber. Could the complainant on subsequent discovery of a fraud, rescind the sale by offering to give back the land shorn of its timber? Or to put another case: suppose Silva had sold to complainant a store stocked with goods, and after a sale of the goods by complainant it was discovered that Silva had committed a fraud. Could it for a moment be contended that Silva would be placed *in statu quo* by receiving back the empty store? We appre-

hend that even so rabid a rescissionist as counsel for complainant, would hardly contend for a rescission in such cases.

And yet they are not different from our case. Ours is even a stronger case; for the land, even without timber, and the house without goods, are of some value; but a mine without any ore in it, is worthless.

(b) The complainant has abandoned and lost the Extensions of the Stirling and the springs of water, and therefore cannot give them back.

It appears from the testimony that these properties were included in the sale for $10,000. In the written offer which Yerington made, dated February 1, 1884, he says: "I have concluded to "make you a straight offer of ten thousand "($10,000) dollars cash for the *Stirling mine prop-*"*erty, which also includes the extensions you have* "*already made, and the springs of water about one* "*and one-half miles distant.*" (Test. pp. 331-2.) And at pp. 337 and 338 of the testimony, Mr. Yerington testifies, that at the time of the negotiations, there was considerable talk about these properties, and says: "When we went out there "he explained to us that he had located these "other mines as extensions of this Stirling mine, "and these two springs. * * * * I said to "him: '*I want these extensions*, to protect the "'Stirling mine. I do not know that they are

"'worth a cent, but I want those to go in this "'Stirling sale. The springs may be of use, and "'may not. You can put them in.' In other "words, I took all the property I understood he "had in that vicinity, and made a clean sweep of "the whole business, and it was agreed to." (Test. p. 337–8.)

An effort has been made to show that they were no part of the trade, but the above testimony fully disposes of such pretense. It was also sought to be shown that they were of no value, but according to his own testimony the extensions were necessary to protect the Stirling; and at pp. 451 and 1352 it will be seen that the springs were valuable, because they were the nearest water to the mine. Anyone who has ever been in that country will know that water and water rights are the most valuable species of property.

If complainant is entitled to rescission, it must restore these springs and extensions to Silva; otherwise he would not be placed *in statu quo.* Yerington testifies that he never did a stroke of work on these extensions to hold them (Test., pp. 338–9) since the purchase; nor does it appear that the provisions applicable to water rights have been complied with, so as to hold them. Hence, it does not appear that complainant can legally give back these properties, and that is a part of its case. This Court will not make a decree that

the complainant convey to Silva a mining claim which it has lost by abandonment, and which it cannot give a title to.

(d) Complainant cannot give to Silva a good title to the Stirling Mine.

It appears that the mine was abandoned by the Company for failure to do the assessment work, and was relocated by one Jack Wilson (Test., pp. 1394-6). It also appears that the mine was sold for taxes for the year 1884, and bid in by the State. Under such circumstances it would be impossible for the Company to convey it to Silva.

In order to avoid these objections, *after the testimony was commenced,* Mr. Reddy procured and offered in evidence a deed from Jack Wilson to the complainant, purporting to convey the Stirling mine. But there was no evidence whatever to show that said deed had ever been delivered to the Development Co., or that the possession of the property had been delivered by Wilson. The deed appears to have been recorded at the request of A. R. Conklin. A deed takes effect only from delivery, and hence it was necessary to show that this deed had been duly delivered to the Development Company, and also that the possession of the property which it purported to convey had been delivered. If the complainant prevails, it will be its duty to deliver possession of the mine to Silva, as well as to give him a

deed of it. Hence, it was the duty of complainant to show that it was able to give such possession; for if we are compelled to take back the mine, we do not wish to be confronted by "Jack Wilson," armed from head to foot, and positively refusing us admission to the mine, as it appears from the evidence he has already done once. Counsel claims that, so far as the taxes are concerned, the mine has been redeemed. It appears, however, that there are still remaining certain steps to be taken; and, at any rate, the whole matter of title is involved in doubt, and we cannot be compelled to take a doubtful title.

Respectfully submitted.

JOHN H. MILLER,
J. P. LANGHORNE,
Attys. for Appellee.

APPENDIX A.

Opinion of Court on Final Hearing.

[Title of Court and Cause.]

SAWYER, Circuit Judge;

SABIN, District Judge, concurring.

This case has been very exhaustively and ably presented by the respective counsel.

It may well be doubted whether the bill ought not to be dismissed on the ground that the parties can not be placed *in statu quo;* also, whether it ought not to be dismissed for want of jurisdiction on the ground that the complainant has an ample remedy at law within the rule recently laid down by the Supreme Court in Buzard v. Houston, 7 Sup. Court Reporter, 249, brought to our notice since the following opinion was written; but upon the view we take, after a careful examination of the evidence, it will not be necessary to discuss these or the numerous other technical grounds relied on by the defense, assuming, for the purposes of this decision, that they should all be determined in favor of the complainant; the bill must still be dismissed on the merits. The elements of such fraudulent representations as will entitle the complainant to maintain his bill are well stated by respondent, in the language of Professor Pomeroy:

"A misrepresentation in order to constitute "fraud must contain the following essential ele- "ments: (1) Its form as a statement of fact; (2) "its purpose of inducing the other party to act; (3) "its untruth; (4) the knowledge or belief of the "party making it; (5) the belief, trust, or reliance "of the party to whom it is made; (6) its materi- "ality."

The material allegations of the bill are categorically and expressly denied by the respondent, and, as an answer on oath is not waived, they must be overthrown by the evidence of two witnesses or that of one and other circumstances satisfactorily proved equivalent to another (Schlessinger vs. Buckingham, 8 Saw. 471; Vigel vs. Hopp, 104 U. S. 441; Morrison vs. Dun, 7 Sup. Ct. Reporter 1225). And even when there are two witnesses, their testimony must be satisfactory. The burthen of proof is on the complainant, and a Court of Equity will not set aside a contract on the ground of fraudulent representations, especially when they are oral and liable to be misunderstood, unless the proofs are of the clearest and most satisfactory character. Fraud is odious, and never to be presumed. These are principles that have been so long and so often repeated that they have become elementary. The specific fraudulent representations relied on are numbered by complainant in his argument from 1 to 7, inclusive. A full discussion of the evidence would be unpro-

fitable, and we shall only briefly indicate the salient points and the results as they appear to our minds:

The alleged misrepresentations relied on in argument of counsel, 1, 2, 2a, and 6, are the most important and vital. The witnesses as to the representations alleged on the part of complainant are Yerington, who made the purchase for complainant, and Forman, an expert in his employ, to examine the mine with a view to purchase; and the witnesses on part of respondent are the respondent Silva himself and Eddy, who does not appear to be an interested party, and who was present during the entire examination and conversations, except while out a few moments at one time to get a pick for Yerington's use. So far as appears, all are respectable and credible witnesses, and there is no reason to believe that either gave wilfully false testimony, or testimony colored or modified otherwise than is liable to occur from interest, bias, or from the different standpoints from which the matter is viewed by the different witnesses.

Misrepresentation numbered 1, as stated in the bill, is as follows:

"That said defendant then and there, with intent "to deceive and defraud this complainant, did "knowingly and designedly, falsely, and fraudu- "lently, represent and pretend to this complainant "that no work had been done in or upon or about "said ore vein to show or which did show that

"said ore vein did not continue downward or "lengthwise from said cut."

This allegation is denied, and there is no proof that respondent made any such representation, even taking complainant's testimony in its strongest aspect. At the point in question Silva had done no work. The complainant's testimony on this point by both Yerington and Forman is as follows, stated in Yerington's language:

"I said," speaking to Silva, "why did you not "go down on it?" He said: 'For mining purposes "the tunnel, he believed, was the proper place." There was a tunnel at a lower level intended to cut the vein below. The purchasers must have concurred with Silva in this view, for as soon as the purchase was made they themselvss commenced work by extending this tunnel to cut the vein. Besides, Silva, so far as the testimony shows, had never in fact done any work at that point to ascertain whether the vein did continue downward or lengthwise, nor was he aware at the time that anybody else had done so; nor is there any direct evidence to show that he knew whether it did or not extend downward or lengthwise. It appeared afterward that parties who owned the claim before Silva did, had, eight or nine years before, run a small shaft down a short distance through the vein at that point and filled it up, but that Silva was entirely ignorant of this fact. This will be noticed again on representation num-

ber 6. Now, this evidence does not show or tend to show that Silva represented that "no work "had been done in or upon or about said ore vein "to show, or which did show that said ore vein did "not continue downward or lengthwise from said "cut." Much less does it show or tend to show in opposition to his express denial that his representation was falsely or fraudulently made. He was not asked whether anybody else had done any work there to ascertain the extent of the ore; nor did he say whether any work had been so done. He only gave as a reason, when asked for one, why he did not "go down on it," in the language of Yerington; or, "did not sink on it here," in Forman's language, and which he had not in fact done, that he thought "the tunnel there the "proper place." This allegation of misrepresentation wholly fails for want of proof.

As to misrepresentations numbered 2 and 2a the allegations of the bill are that he falsely and fraudulently stated "that the bottom of said "chamber was composed of ore of the same kind," etc. These allegations are categorically denied in the sworn answer.

Yerington testified that Forman said to Silva: "Now, Silva, under this ore" (ore that had crumbled and fallen down on the floor) "is this "floor solid ore?" and he said: "Yes." "State "whether there was any comparison made as to "the quality of the ore between the ore on the

"sides of the chamber and the ore that was said "to exist in the bottom, beneath the loose stuff?" "Answer. I do not think so." "State whether "Silva said at any time during the conversation "there that the bottom was composed of the same "kind of ore that was found on the sides of the "ore chamber?" "Answer. I do not remember "that." On a subsequent day, however, he corrected his testimony so that it corresponded with Forman's, and said that he had refreshed his memory on these points, and that Silva, in reply to Forman's question, said: "It is good ore, and "as good ore as you will see here" (referring to the sides), "if not better." And Forman makes a like statement in his testimony. Silva, in addition to his positive denial in his answer, testifies on this point positively that there "never was a "word said about that." He added that, "they "asked me what I thought of the ore body, and I "said I thought it would be extensive. I thought "so at the time, and I think so yet." Eddy does not appear to have heard any such statement.

On this point, then, the testimony of Silva is directly to the contrary to that of Yerington and Forman. Yerington did not remember on the first day, but did on the second, after refreshing his recollection. This testimony was taken in June, 1886, about two years and a half after the conversations related took place. They were present at the time examining the mine and engaged in the conversation for an hour or more.

These discrepencies in matters of detail during a long conversation, related by different parties, viewing the subject from different standpoints after the lapse of so long a period of time, are no more than might reasonably be expected, even in honest witnesses. There is no occasion to impute any intention to testify falsely to either. Viewing the case with all the surrounding circumstances, and considering the presumption of innocence, we do not think that we should be justified in finding that Silva knowingly and wilfully made the representation in the form stated by Forman and finally by Yerington, after a night's reflection and refreshing his memory, or made it substantially as stated by them. Testimony as to oral statements by parties antagonistic in interest, and especially after a considerable lapse of time, are always unsatisfactory. Parties are extremely liable to misunderstand each other, and in looking back upon the transaction in the light of subsequent developments are prone to take the view most advantageous to themselves. It is on the ground that oral contracts of importance are forbidden and made void by the statute of frauds. If one party desires to hold another responsible for representations made in a contract of great moment it is easy is put them in writing, and he who neglects to do so must be held to make the most clear and satisfactory proof of oral representations upon which he relies to avoid a con-

tract where there is a disagreement as to what was said.

Silva nowhere appears to have been anxious to sell. He did not seek Yerington with a view of selling him the mine, but Yerington sought Silva. He seems to have been the most anxious for the transaction. Silva had owned the mine for several years. It was not he that fixed or named the price even. Yerington sought to know for what sum he would sell. His first price was $15,000. Yerington finally offered $10,000, which was at first declined, but finally accepted. Yerington and his expert, both men of large experience in mines and contracts for mines, not likely to rely very much on mere representations in such matters, were there examining for themselves and seeking to purchase, and not Silva pressing him to purchase. There is no such anxiety manifested by Silva to sell as would lead us to suspect that he would knowingly and wilfully make false and fraudulent representations in order to secure a purchaser, and then support them by flat perjury. His course, both before and after the sale, was such as a man would be likely to pursue who is conscious of having acted honestly. He openly, with Yerington's knowledge, left his money on deposit, where he must have known that it could be reached upon discovery of fraud, which must have soon followed if any there were. We feel compelled to find against the complainant on the alleged misrepresentation—numbered 2 and 2a. On branch 2a

defendant's denial is only opposed by one witness, and he an interested one; and on branch 2, Yerington was uncertain or did not recollect on the first day, but remembered after refreshing his memory on a subsequent day.

The next are alleged misrepresentations, numbered 3 and 4, as to the quantity of ore in sight. It is manifest from complainant's own testimony that this was a mere expression of opinion as to quantity. Silva said, in express terms, as stated by Yerington himself, that "in his judgment" there was so much in sight. Yerington differed, and thought there was much less. The difference of opinion was discussed between them, and according to Yerington's own testimony he did not rely on this statement. There is no sufficient evidence to show that this was not Silva's honest opinion. Besides, Yerington and his expert foreman were as competent to judge how much ore there was "in sight" as Silva was. They were no novices in matters of this kind. This misrepresentation, if such it be, does not contain either the first, fourth or fifth element stated by Pomeroy as essential elements in a fradulent misrepresentation. So as to number 5, relating to the value of the mine, Yerington testified that Silva said, "He believed the mine was worth $15,000; "that was what he wanted for it." If he made such statement it was manifestly the mere expression of opinion, and there is no direct evidence that he did not believe it. The misrepresentation

numbered 6 is alleged in the bill as follows: "That "said defendant did further falsely, etc., * * * "represent that he had shown and pointed out "* * * all cuts, openings, tunnels, drifts, shafts, "winzes, and work of every kind and nature which "had ever been made in said mine or mining claim, "and that he had fully and truly disclosed and de- "scribed * * * all that he had discovered and "knew concerning the extent of the work and the "ore in said mine."

As to this allegation Yerington testifies that while in this mine he said to Silva, "Now, have "you shown the whole of this mine?" and he replied, "Yes, everything;" whereas, Silva says I told him I "had shown him all the work that was "done in the mine by me or under my direction," and this is simply statement against statement. But Yerington says again at Carson he said to Silva before closing the bargain, "Now, Silva, "* * * I want to know if you have done any "work in the mine in any way, shape, or manner "around those ore bodies that you have not shown "to me or told me of, or of which I am ignorant." And Silva replied, "No, sir; I have not." Now, that confirms Silva, as Yerington on this occasion only asked as to Silva's own work, not what others had done, and he was seeking knowledge upon the same point as before; and, so far as the testimony goes, Silva's statement is strictly true, for there is no direct testimony tending to show that there was any work done by him that was not shown

to Yerington, and he declares positively that there was none. It turned out afterward that a small shaft had been sunk at the point of location and filled up, but it is not now even claimed that Silva dug it. It was clearly shown that this shaft had been dug and filled up several years before Silva owned the mine, and there is no evidence that Silva ever knew of the shaft until after the sale, but his direct and positive evidence and other corroborative circumstances show that he did not. It is clear that he did not know of it. So even if he made the unqualified declaration that he had shown all the work, this was not knowingly false, as he clearly supposed he had, so far as this particular is concerned, and the fourth elements of a fraudulent misrepresentation essential to avoid the contract is wanting. There were some drill holes filled up, said to have been afterwards found in the ore, but there is no direct testimony that Silva drilled them. Coffin testifies that later he found an old drill about six feet long outside on the hill to the left of the tunnel, which was not brought there by his orders. This and some other circumstances, such as that Silva once bought a piece of steel of which the drill found might have been made, are relied on to show that Silva did the drilling; but others owned and worked the mine before as well as after Silva owned it, and besides, a drill is daily used in legitimate mining. This evidence is wholly insufficient to overthrow

the direct positive testimony of Silva that he did not do it, strengthened by the fact that he commenced running the tunnel on the 80-foot level to reach this same vein, the same tunnel which was extended by complainant after the purchase, which he would not be likely to have done had he drilled these holes and found that the vein had run out. These holes may have been drilled, also, before Silva's time, or even after his sale, by others. It is simply unknown who drilled them. At all events, the testimony is insufficient to justify us in holding that he did it or knew of them.

The allegation of misrepresentation numbered 7 is not sustained by the evidence. The proofs, in our judgment, are insufficient to sustain the bill, the allegations of which are positively denied under oath; and the bill must be dismissed with costs.

It is so ordered.

(Signed) SAWYER,
Circuit Judge.

(Signed) SABIN,
District Judge.

[ENDORSED:] Rec'd in open Court, March 14th, 1887.

L. S. B. SAWYER, Clerk.
By F. D. Monckton, Deputy Clerk.

APPENDIX B.

[Title of Court and Cause.]

Opinion Denying Petition for Rehearing.

This is a bill to rescind a contract of purchase of a silver mine on the ground of fraudulent representation and to recover the consideration paid. The mine had been worked for some time before the filing of the bill to rescind, and exhausted of such mineral as was found in it. The defendant demurred for want of equity, and insisted that it was not a case for equitable cognizance, while complainant earnestly maintained the contrary. The Court, being of the opinion upon the authorities as they then stood that the bill presented a case for equitable cognizance, overruled the demurrer and required an answer to the bill.

An answer and replication having been filed, and the testimony regularly taken in pursuance of the equity practice of the Court, the case was finally heard and submitted on the merits. The defendant again at the final hearing earnestly pressed the jurisdictional objection, and the complainant as earnestly insisted upon the jurisdiction. After elaborate arguments upon voluminous testimony, and a full consideration, the Court came to the conclusion that the bill must be dismissed on the merits. The opinion on file

in the case was thereupon written and concurred in by the District Judge, and was ready for announcement. Before the announcement a supplemental brief of defendant filed in another case, but made applicable to this also, attracted the attention of the Court, in which the case of Buzard v. Houston, 119 U. S. 347, decided since the argument and submission, but not reported, was cited by defendant as sustaining his position that the case was not one of equity jurisdiction. Although it seemed at first view to cover this case, upon further consideration the Court was in doubt. As the complainants still failed to yield to the authority of this decision, and as the bill must be dismissed in either view of the case, the decision was announced and the bill dismissed upon the merits, a reference to the case cited having been introduced into the opinion.

The decision being adverse, the complainant now changes its ground, denies the jurisdiction of the Court, and seeks a rehearing mainly upon that ground, although insisting that the decree should have been in its favor on the merits, and making that alleged error a ground for a rehearing also. The object sought is to have the bill dismissed for want of jurisdiction, in order that complainant may try the case over again in another suit, also in equity, there being one now pending as an appendage to a suit of intervention in a suit between an endorser of the defendant

and Wells, Fargo & Co., upon the certificate of deposit issued for specific purchase money, which formed the consideration of the sale of the mines. If the Court is without jurisdiction in this case, it would seem to be equally so in that. The complainant's petition for rehearing on this ground is entitled to no consideration unless the Court is absolutely without jurisdiction, and we are not satisfied that it is. Complainant selected its own forum and pressed its case to a hearing and decision on the merits, against the opposition of defendant, based on this very ground, and only desires a rehearing because it failed on the merits.

The bringing of this suit and pressing it to a hearing on the equity side of the Court against the protest of the defendant, should be regarded as a waiver of any right to try the case by a jury, and all the advantages, if any there be, that it might otherwise have enjoyed in a Court of law.

We are by no means certain that this case falls within the decision in Buzard v. Houston. It is by no means so bald of equity as that case. There are many circumstances set out that seem to be appropriate to the jurisdiction of a Court of equity.

There was a question raised as to whether the parties could be placed *in statu quo*, the complainant having worked the claim for some time and taken out the metal, so far as any was found, and there was some rich ore in sight, or the purchase would not have been made. At least so the bill

says. This would seem to present a case for an accounting as to the cost of working the mine and the amount of the precious metal yielded. So, also, as an answer on oath was not waived, the defendant was called upon to answer under oath, and in that aspect of the case it was substantially a bill of discovery. The answer to the material allegations of the bill denying them not only formed an issue, but it was evidence in the case called out by plaintiff.

The complainant was entitled under the equity practice to obtain his evidence in that way, however inconvenient at this day it may be. Were we to grant a rehearing and dismiss the bill for want of jurisdiction, our action would at least present a fair case for appeal by the other side, and an appeal would doubtless be taken. It might just as well be taken now at this point before the case becomes complicated by further action and the trial of the other suits. Should it turn out that the case is a proper one for equitable cognizance, the Supreme Court will try the case anew and affirm the decree if found correct; or if not, then render such a decree on the merits as the evidence requires.

Should the decree be reversed and the bill dismissed for want of jurisdiction, we shall then know authoritively what to do in the other suits.

That would end the litigation; whereas, should we grant a rehearing and dismiss the bill for want

of jurisdiction, and this action should turn out on appeal to be erroneous, then there is no knowing where the litigation would end, or what embarassments and complications might arise from the other suits pending.

It will be better for all parties to have the matter settled at this point. If any inconvenience should result to complainant from this course, it will arise from its own action in selecting the wrong jurisdiction, and against the protest of defendant insisting upon trying the case in an improper forum. As the defendant has succeeded on the merits, in spite of this objection to the forum, under all the circumstances, the inconvenience of taking the appeal should be put upon the complainant. As we are in some doubt whether the case strictly falls within the rule established in the case cited, as the complainant, after selecting its forum and insisting upon trying the case on the equity side of the Court, ought not now to be heard to say was without jurisdiction, and as we see no sufficient reason to be dissatisfied with the conclusions before reached on the merits, the petition for rehearing will be denied, and it is so ordered.

(Signed:) SAWYER,
Circuit Judge.

SABIN,
District Judge.

[Endorsed:] Opinion on petition.